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IN THE

Supreme Court of the United States

October Term, 1972

72-1378

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Christian Echoes National Ministry, Inc. petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit which reversed the judgment of the United States District Court for the Northern District of Oklahoma.

Opinions Below

The Findings of Fact and Conclusions of Law of the District Court (Appendix A, *infra*, pp. 1a-33a) are not reported. The opinion of this Court vacating the judgment of the District Court and remanding the case for the entry of a fresh decree (Appendix B, *infra*, pp. 34a-39a) is reported at 404 U.S. 561. The opinion of the Court of Appeals (Appendix C, *infra*, pp. 40a-55a) is reported at 470 F.2d 849.

Jurisdiction

The judgment of the Court of Appeals (Appendix D, *infra*, p. 56a) was entered on December 18, 1972. A petition for rehearing was filed on January 2, 1973. An order denying the petition was entered on January 17, 1973. (Appendix E, *infra*, p. 57a) The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Did the Court of Appeals err in construing Section 501(c)(3) of the Internal Revenue Code of 1954 as authorizing the revocation of tax exemption of an organization concededly organized and operated exclusively for religious purposes on a finding by the Internal Revenue Service that a substantial part of its religious activities constituted propaganda intended to influence legislation and that its pastor and leader had indicated a preference for certain candidates in a political campaign?

2. Does Section 501(c)(3) so construed and applied violate the (1) Free Exercise, (2) Establishment, (3) Free Speech, (4) Freedom of Assembly, Freedom of Association and Freedom of Petition Clauses of the First Amendment to the United States Constitution?

3. Whether under the Due Process Clause of the Fifth Amendment the Section 501(c)(3) revocation provisions of tax exemption as applied to religious organizations are void by reason of vagueness, overbreadth and unequal protection.

4. Did the Court of Appeals err in holding that the Internal Revenue Service did not discriminate against Peti-

tioner and thus did not deny Petitioner due process of law guaranteed by the Fifth Amendment to the United States Constitution?

5. May the Internal Revenue Service revoke retroactively the tax exemption of Petitioner where there was concededly no change in the nature of Petitioner's purposes and operations from the time exemption was originally accorded by the Internal Revenue Service until ultimately revoked, and where exemption was continued after each of four audits and examinations by the Service in the interim between original grant and ultimate revocation?

Constitutional, Statutory and Regulatory Provisions Involved

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The pertinent part of the Fifth Amendment to the United States Constitution provides:

> No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *.

The pertinent parts of the federal statutes involved are set forth as Appendix F, *infra*, pp. 58a-59a.

The pertinent parts of the Treasury Regulations on Income Tax are set forth as Appendix G, *infra*, pp. 60a-61a.

Statement

A. The Proceedings

This is a suit for refund of payments made by Petitioner under the Federal Insurance Contributions Act (FICA) for the years 1961 and 1963 through 1968. The District Court upheld Petitioner's claim and entered judgment in its favor. (Appendix H, *infra*, p. 62a) The Government appealed to this Court which held that it had no jurisdiction of a direct appeal, vacated the judgment and remanded the case to the District Court for the entry of a new judgment from which the Government could appeal to the Court of Appeals. (App. B, *infra*, p. 39a) A new judgment was entered for the Petitioner (Appendix I, *infra*, pp. 63a-64a) and an appeal was taken by the Government. (Appendix J, *infra*, p. 65a) The Court of Appeals reversed the judgment (App. D, *infra*, p. 56a) and denied a petition for rehearing. (App. E, *infra*, p. 57a)

B. Factual Background

Petitioner, Christian Echoes National Ministry, Inc., was duly organized in 1951 as a nonprofit, religious and educational corporation under the laws of the State of Oklahoma. Its Amended Articles of Incorporation (1952) state in part:

> The purposes for which this corporation is formed are to promote the Articles of Faith set forth in the *Bylaws* by establishing and maintaining weekly religious radio and television broadcasts, a national religious magazine and other religious publications, religious educational institutions, evangelistic campaigns, and meetings for the promotion of the social and spirit-

ual welfare of the community, state and nation * * *. (App. A, *infra,* p. 3a)

The relevant parts of Petitioner's Articles of Faith as set forth in its Bylaws are recited in Appendix A, *infra,* pp. 3a-4a.

From its beginning Petitioner's leading spirit has been its president and pastor, the Reverend Dr. Billy James Hargis, a duly ordained minister of the Disciples of Christ, a recognized Protestant denomination operating nationwide. Dr. Hargis has been assisted by other duly ordained clergymen and by lay officials. From the time of its organization Petitioner has conducted regular Sunday church worship services in Tulsa, Oklahoma, through Dr. Hargis or other pastors on its staff, all of whom perform the usual sacerdotal ministries such as baptisms and marriage solemnizations. In addition, staff pastors travel widely proclaiming the teachings of the church. These religious services are usually held in local churches, or when these are not available, in other types of meeting places. (App. A, *infra,* pp. 4a-6a) Petitioner also uses the radio and publishes two magazines. (App. A, *infra,* pp. 6a-7a)

The *bona fides* of Petitioner and the ecclesiastical credentials of Dr. Hargis and the other pastors on its staff are not challenged. Sincerity of religious belief is not an issue. It is not charged that any part of Petitioner's net earnings inures to the benefit of any individual, nor is it charged that any activity of Petitioner is immoral, criminal, illegal or a grave abuse of a paramount interest of the United States.

In May, 1952, Petitioner applied for income tax exemption under Section 101(6) of the Internal Revenue Code

of 1939, now Section 501(c)(3). Petitioner submitted copies of its Amended Articles of Incorporation, Bylaws and representative samples of magazines and radio sermons and fully apprised the Internal Revenue Service of the purposes and characteristics of the operations of Petitioner. Among the publications presented was "Communism Exposed" which definitively informed the IRS of the basic religious tenets and the nature and scope of Petitioner's anti-Communist program of activities.

On March 12, 1953, following ten months of evaluation of Petitioner's application, the IRS issued to Petitioner its letter of exemption certifying that it was "* * * organized and operated exclusively for religious and educational purposes * * *." (App. A, *infra*, p. 9a) It is conceded that, from the day of its organization until the present, there has been no change in the purposes or operation of Petitioner; although, of course, it expanded as its ministry grew increasingly successful. As the Court of Appeals said, "The activities of the organization have been addressed to that theology [as set forth in the Articles of Faith presented to the IRS in 1952] ever since the date of incorporation." (App. C, *infra*, p. 42a)

In February, 1958, Petitioner received a letter from the IRS stating "[a]lthough your exempt status has been approved, periodic changes in the law and the regulations make it necessary for us to review the status of all tax exempt organizations at designated intervals." (Pltf. Ex. 4 in District Court) In November, 1958, Petitioner received from the IRS a No Change Report stating the "[e]xamination did not disclose any tax liability or change in exemption status." (*Ibid.*)

Nevertheless, sometime early in 1962, the National Office of the IRS *sua sponte* determined that Petitioner's tax exempt status must be revoked and initiated the steps which ultimately culminated in revocation. First it ordered an extensive examination of Petitioner's activities with emphasis on financial affairs, *e.g.*, inurement. The examination was conducted by an agent of the IRS Tulsa office who reported that "* * * operations are for all practical purposes the same as when the exemption was granted to the organization." (App. A, *infra*, p. 10a) Although the agent had spent 92 hours in examining Petitioner's operations, the National Office was unsatisfied and directed the agent to re-examine Petitioner. (*Ibid.*)

On re-examination the agent spent an additional 151 hours, but the outcome was the same. Again he reported "* * * it appears that present operations are basically the same as when the exemption was granted by the National Office March 12, 1953." (*Ibid.*)

The National Office remained unsatisfied and returned the file stating "* * * additional facts need to be secured and questions answered." (App. A, *infra*, pp. 10a-11a) An additional agent was put on the case, a third examination was made and a joint report was issued by both agents on July 15, 1963, again finding no ground for change. (*Ibid.*)

Up to this point the matter was between the National Office and the Tulsa office. Because the National Office remained unsatisfied with the No Change Report, it invoked the aid first of the Oklahoma City District Office and then of the Dallas Regional Office, but to no avail. The final

(fourth) report issued by the Tulsa office on November 27, 1963, after further examinations and requested interim reports, stated:

> As far as can be determined the organization operates within the exemption letter as a religious and educational organization. It continues to operate under the purposes set forth in its application as noted in the second paragraph of this memorandum. No statements were found in publications, radio and television scripts or books that advocated the election of a particular candidate or the passage of legislation. (Pltf. Ex. 18 in District Court)

The National Office then took matters into its own hands. For the sole purpose of vesting jurisdiction of the matter in the hands of the National Office, the National Office administratively directed the Oklahoma City District Office to make to it a request for "technical advice," although the Oklahoma City office did not need or want such advice. The Oklahoma City office obediently made the "request." In a long distance conference by telephone among national, regional and district IRS officers (Pltf. Ex. 22 in District Court) set up by the National Office, the National Office stated that a tax exemption revocation letter against Christian Echoes had been prepared by the National Office and was being sent to the District Office. The letter was to be signed and sent to Petitioner within one week. The National Office explained that it did not have a legal opinion from IRS general counsel and that additional material should be secured to develop the so-called "case analysis" against Petitioner. Instructions were given to secure additional information even after the revocation letter was sent. In this case the IRS admittedly pronounced judgment against Petitioner before accumulating evidence.

The letter of revocation (Pltf. Ex. 24 in District Court) set forth three conclusions:

> (1) You are not operated exclusively for religious, educational or charitable purposes within the meaning of Sections 501(c)(3) and 170(c) of the Internal Revenue Code.
>
> (2) Further, a substantial part of your activities is attempting to influence legislation, contrary to the prohibition contained in Section 501(c)(3).
>
> (3) Finally, you have intervened in political campaigns on behalf of candidates for public office in violation of the prohibition contained in Section 501(c)(3).

The Government has abandoned the first ground (it could hardly do otherwise) and now concedes that Petitioner has always operated exclusively for religious purposes within the meaning of the statute. Government's Jurisdictional Statement to the United States Supreme Court in 71-565, p. 9, footnote 5; Government's Brief to Court of Appeals in 72-1308, p. 27, footnote 12. (See App. C, *infra*, pp. 45a-46a) Accordingly, the Court of Appeals considered only grounds two and three and reached the conclusion that as to these the Government had sustained its case and the District Court was in error in deciding against it. (App. C, *infra*, p. 50a) The Court of Appeals further determined that the methods and procedures employed by the IRS in the investigation and revocation were not unconstitutional as denying due process of law to Petitioner. (App. C, *infra*, p. 54a) The Court of Appeals also found that retroactive revocation of Petitioner's exemption was proper.[1]

1. Although the District Court had found it unnecessary to decide the question, the Court of Appeals ruled on the issue of retroactivity at the request of the Government. (App. C, *infra*, p. 55a)

Section 501(c)(3) properly construed and applied presents no factual basis to set aside the District Court's findings. The remaining legal issues are:

(1) the meaning and application of the substantiality and political campaigns provisions of Section 501(c)(3),

(2) their constitutionality as construed and applied by the Court of Appeals,

(3) the constitutionality of the revocation procedure employed by the IRS and,

(4) the legality of the retroactive provision of the revocation.

Reasons for Granting the Writ

1. National Importance

The pervasive national importance of this case is not open to question. At the very least the Court of Appeals' decision casts a great fear upon every church whose pastor conceives his sacred mission to encompass teaching the relevance and validity of the truths of the Gospel in relation to contemporary society. A bona fide religious organization, which Petitioner concededly is, may believe, as Petitioner does, that Communism is the anti-Christ of today's world but it acts at the peril of its existence if it preaches this doctrine too often or too vigorously.[2] Nor

2. Although the present suit is only for recovery of taxes under the Federal Insurance Contributions Act (FICA), these taxes were assessed by reason of the Internal Revenue Service's determination that Petitioner failed to qualify under Section 501(c)(3). Failure to qualify under that section deprives the church of tax exemption (both FICA and federal income taxes) and deductibility benefits. It is doubtful that the majority of American churches today could survive without these benefits. Additionally, the IRS has assessed against Petitioner $218,481.09 in income taxes for the years 1964 through

will it find safety in the fact that for a decade it has preached this truth in the same way and, proportionately to its resources, to the same extent, with the knowing sanction of the Internal Revenue Service. Safety is to be found, if at all, in commanding pastors to restrict their exhorting parishioners to do good and eschew evil but refrain from specifying in contemporary terms what that good and evil may be. Exemption is exchanged for silence.

The Court of Appeals has painted with so broad a brush that it has left little of the canvas exposed to the salutary sunlight of vigorous presentation of opposing religious viewpoints. And it will be the American people as a whole, the real beneficiaries of the Religious Freedoms Clauses, who will suffer by this silencing of religious organizations.

2. Statutory Construction

This Court previously found (App. B, *infra*, p. 38a) that the District Court reached its conclusion not as a matter of constitutional law but of statutory construction, although in construing the statute it applied the well-established rule of avoiding constitutional issues if the law can be fairly so construed. *United States* v. *Jin Fuey Moy*, 241 U.S. 394, 401 (1916); *United States* v. *Rumely*, 345 U.S. 41, 47 (1953). The Court of Appeals ignored this salutary rule and thus was compelled to pass upon the constitutionality of Section 501(c)(3) as construed and applied by the IRS. We will consider each of the constitutional issues,

1966. (Appendix K, *infra*, pp. 66a-67a) These income taxes and FICA taxes have been assessed against and can only be paid from funds received as free will offerings of worshipers espousing Petitioner's religious doctrines. In *Walz* v. *Tax Commission*, 397 U.S. 664, 676 (1970), this Court said, "* * * [t]he hazards of churches supporting government are hardly less in their potential than the hazards of government supporting churches * * *."

but we point out that because the statute encroaches upon so many sensitive constitutional rights, the Court of Appeals erred in failing to construe the statute and apply it as the District Court had done. We note the following other errors of statutory construction committed by the Court of Appeals:

A. The Court of Appeals paid no heed to the long history of religious involvement in social and public issues. From Moses to Jesus to Martin Luther, men of God have inveighed against the evils of the Kingdom that is of this world. On these shores, the Anglican Church preached against the sin of rebellion, and the Congregationalists against the sin of tyranny. A. Stokes and L. Pfeffer, *Church and State in the United States,* 37 (1964). The Presbyterian Church in the North deemed slavery sinful; its counterpart in the South condemned church opposition to the institution. *See, Watson* v. *Jones,* 80 U.S. (13 Wall.) 679 (1872). The Eighteenth Amendment was the child of the Protestant churches, and many religious bodies have from time to time taken contradictory positions on subjects such as child labor, obscenity, divorce, abortion, birth control, the Viet Nam War, as well as Communism.

It was error for the Court of Appeals to ignore this historic background. *Walz* v. *Tax Commission,* 397 U.S. 664, 678 (1970). It is highly doubtful that the Congress intended to inflict so mortal a blow to this tradition and this is exemplified by the IRS's decade of approval of the Petitioner's activities.

Religious, educational and charitable organizations were exempt from federal income taxes as early as 1894.[3] The ex-

3. Act of August 27, 1894, Ch. 349, §32; 28 Stat. 556.

emptions were contained in the Estate Tax Act of 1909,[4] and in the first modern tax law passed in 1913.[5] The Treasury, in 1919, apparently in an attempt merely to clarify the meaning of the term "educational," adopted without explanation a Regulation stating: "* * * [B]ut associations formed to disseminate controversial or partisan propaganda are not educational within the meaning of the statute."[6] The Regulation was thereafter applied only to non-religious organizations[7] consistent with its origin. In 1930, the Second Circuit handed down the decision in *Slee* v. *Commissioner*, 42 F.2d 184 (1930), affirming a denial of tax deduction as a charitable organization to the American Birth Control League, which had among its purposes the repeal of laws against birth control. The court stated (at p. 185):

> Political agitation as such is outside the statute, however innocent the aim, though it adds nothing to dub it "propaganda," a polemical word used to decry the publicity of the other side. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them.[8]

The court held that the League's purposes were not exclusively charitable, educational or scientific.

When, therefore, Congress in 1934 added the substantiality provision to the Code, it did so in a background of restrictions on propaganda limited to *non-religious* organ-

4. Ch. 6, §38, 36 Stat. 112-17.

5. Act of October 3, 1913, Ch. 16, §II(G)(a), 38 Stat. 172.

6. Treas. Reg. 45, art. 517 (1919).

7. *See, e.g., H. S. Vanderbilt*, 34 B.T.A. 1033 (1936), *aff'd* 93 F.2d 360 (1st Cir. 1937).

8. It should be noted that in *Walz* the Court steadfastly refused to equate exemption and subvention. 397 U.S. at 675.

izations. An organization which receives exemption because it is concededly organized and operated exclusively for *religious* purposes cannot be deprived of its exemption because a substantial part of its operations lies in the realm in which it was organized. This does not render the substantiality provision superfluous since it was added on to the existing formula of exemptions, only one of which was religious. At the very least, the Court of Appeals should have applied a construction of the political provisions less restrictive where churches are affected.

B. The Court of Appeals, taking the position that exemption is not a right but a privilege, adopted a narrow interpretation of the privilege or, more accurately, a broad interpretation of the IRS's power under the substantiality provision to revoke the exemption. It failed to recognize or give effect to the well-established rule that a statute restricting freedom of expression must be construed narrowly to avoid overbreadth, limiting the restriction to the narrowest limits compatible with the government's compelling and legitimate interest and the fullest freedom for the expression of ideas. *Hannegan* v. *Esquire*, 327 U.S. 146, 156 (1946); *Blount* v. *Rizzi*, 400 U.S. 410 (1971). This Court has held that Freedom of Religion is an inherent right of all citizens and not the bounty of government. *Walz, supra.* The court's failure to apply the appropriate rule of statutory construction has led it to a number of grievous errors, among which are the following:

i. In determining that Petitioner had intervened in political campaigns on behalf of candidates for public office, the court failed to distinguish between expressions of voter preference by Dr. Hargis and official endorsements

by the religious organization. For example, the Court of Appeals found that "[t]he annual convention endorsed Senator Barry Goldwater." (App. C, *infra*, p. 50a) The annual convention did no such thing; it had a resolutions committee which presented resolutions that, along with others arising from the floor, were adopted or rejected (Appendix, in Court of Appeals, p. 76). None endorsed any candidate for any office, although Dr. Hargis personally made statements that he strongly preferred Senator Goldwater to President Johnson.

If the Court of Appeals' ascription to a church of the personal political endorsement of its pastor is adopted, the survival of every church rests in the uncontrollable hands of the pastor. The forfeiture of exemption for intervention in political campaigns, unlike influencing legislation, does not depend on substantiality; any intervention is fatal.

Intervention of clergymen in political campaigns has a long history. Clergymen have often themselves run for public office. The Reverend Adam Clayton Powell, Jr., for many years served simultaneously in Congress and as pastor of a Baptist church. He often intervened in political campaigns in his own behalf and on behalf of other candidates. If the Court of Appeals is correct, his church should have forfeited its exemption many times over. The nationally known clergyman, Billy Graham, publicly endorsed President Richard Nixon in the recent 1972 Nixon-McGovern campaign.

ii. In interpreting "attempting to influence legislation" in the substantiality provision, the Court of Appeals for

all practical purposes equated "legislation" with public issues generally, or put somewhat differently, held that whatever may influence public opinion on a social issue *ipso facto* attempts to influence legislation. (App. C, *infra*, p. 48a) If the Court of Appeals is correct, Congress in 1934 intended to silence the churches as effectively, though of course more delicately, than Stalinist Russia and Hitler's Germany were seeking to do at exactly the same time. We cannot believe Congress intended this, nor does Congress have such power.

iii. By leaving undefined the term "substantial part" [the Court of Appeals rejected the percentage test suggested in *Seasongood* v. *Commissioner*, 227 F.2d 907 (6th Cir. 1955)], the Court in effect vested in the IRS the power of a censor over the thoughts and expressions of the churches. This suit is itself a case history of how the exercise of such censorship powers can change radically with changes of political administrations. As is conceded, what Petitioner did during the years did not change; what changed was the administration and with it the censor. Did Congress intend this? We cannot believe it did and, again, Congress has no such power.

iv. The Court of Appeals found no statutory difference between appeals to the public and direct communication with legislators. (App. C, *infra*, pp. 48a-49a) In this the court failed to follow *United States* v. *Rumely*, *supra*, and was clearly in error.[9]

9. *Cammarano* v. *United States*, 358 U.S. 498 (1959), is not *contra*. There are different interests and hence different criteria involved where the question to be determined is the relevancy and applicability of certain expenditures as an incident to the profit making activities of a commercial enterprise on the one hand, and the loss of exemption on the part of a concededly religious organization.

C. Petitioner further believes the statute should be interpreted to provide that religious activity and the proscribed political activity are mutually exclusive. If an organization is concededly organized and operated exclusively for religious purposes (if all of its activities are expressions of sincere religious beliefs), then the activities of the organization cannot be interpreted to be political for the purpose of revocation of tax exemption. *Cf.* §1.501 (c)(3)-1(c)(1) and §1.501(c)(3)-1(c)(3), Treasury Regulations on Income Tax (1954 Code). (App. G, *infra*, pp. 60a-61a)

3. Constitutional Issues

a. Establishment of Religion

In *Walz*, *supra*, the Court held that exemption accorded to religious organizations did not constitute a subvention or subsidization and is constitutional because it entails less government involvement and entanglement with religion than taxing religious institutions would.[10] The Court specifically refused to limit the exemption to the proportion of social welfare services or "good works" that are done for parishioners and others. Such limitation, the Court held,

10. In *Walz*, this Court specifically stated:

* * * Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes.

Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit and also gives rise to some, but yet a lesser, involvement than taxing them. In analyzing either alternative the questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement. 397 U.S. at 674-75.

could give rise to confrontations that could escalate to constitutional dimensions.

This is exactly what has happened in the present case. The long continued and persistent auditing of Petitioner's books and records, the examination of its pamphlets and publications, the playing and replaying of Dr. Hargis' radio broadcasts, all these and many similar detective operations, sanctioned by the Court of Appeals, propel the government into the thicket of theological controversy. It was just this type of continuing administrative surveillance of religious institutions by the government which the Court held in *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971), to violate both the spirit and the letter of the Establishment Clause.

Petitioner, in this case, was subjected to five years of continuous auditing and relentless investigation by the IRS including various administrative hearings in Tulsa, Oklahoma City and Washington, D.C. Hundreds of hours were spent by revenue agents searching every nook and cranny within the walls of this religious organization. This interference with the operations of this organization by continued harassment points up the danger of "involvement" in which civil government should not be engaged. *Walz, supra.*

The controversy with which Petitioner is involved is not new in American church history. The same conflict between conservatism, traditionalism, anti-Communism, nationalism, etc., on the one hand and modernism, radicalism, libertarianism, and progressivism on the other has been going on ever since the churches were established in this country and has led to such litigation as *Watson* v. *Jones,*

supra; Kedroff v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952); *Presbyterian Church of the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969); and many other similar cases. In each of these cases this Court indicated with clarity and emphasis that the mandate of the Establishment Clause is non-intervention. The decision of the Court of Appeals in the present case is directly to the contrary. At the very least it invites, if it does not direct, the IRS to act as arbiter of such controversies.

The only limitations this Court has ever sustained on the free exercise of religion are those activities which are prohibited to all individuals and groups, such as polygamy, child labor, etc. *Cf. Sherbert* v. *Verner,* 374 U.S. 398 (1963). The Respondent and the Court of Appeals concede that Petitioner may lawfully continue to perform each and every challenged religious activity in which it now engages. The price exacted for permission to engage in such religious activity, however, is the denial of tax exemption, leaving other religious sects, whose doctrines do not require such religious activities, in a preferred position. The religion of Petitioner has become more expensive than that of others. An adverse decision will destroy Petitioner by taxing it out of existence. (Appendix K, *infra,* pp. 66a-67a)

b. Free Exercise

One of the most startling aspects of the Court of Appeals' decision is its reliance on a proposition, whose historic validity is in considerable doubt at best, but which has been repeatedly rejected by this Court time and time again in recent years, that because "* * * tax exemption is a priv-

ilege, a matter of grace rather than right * * *" (App. C, *infra*, p. 53a), the limitations contained in Section 501(c)(3) as construed and applied by it do not violate the Free Exercise Clause. In using the privilege-not-right dichotomy the Court of Appeals has gone contrary to many decisions of this Court interpreting the Free Exercise Clause. In *Sherbert* v. *Verner, supra,* the Court specifically rejected that dichotomy holding that the act of the state in depriving a Sabbatarian of the privilege of receiving unemployment compensation benefits violated the Free Exercise Clause. *First Unitarian Church* v. *County of Los Angeles,* 357 U.S. 545 (1958), was decided in a due process rather than free exercise context, but the privilege-not-right distinction was again rejected, as it was in *Fowler* v. *Rhode Island,* 345 U.S. 67 (1953), (privilege of holding religious meetings in public parks) and other cases.

This Court has long recognized the terrifying unbridled power of the religious censor. *See, Cantwell* v. *Connecticut,* 310 U.S. 296 (1940). If the Court of Appeals' decision stands we may have in this country for the first time a censor of religions in the person of the holder for the time being of the office of Commissioner of Internal Revenue. This is inimical to the free exercise of religion.

In *Fowler* v. *Rhode Island, supra* at 70, this Court held:

> * * * [I]t is no business of courts to say that what is a religious practice or activity for one group is not a religion under the protection of the First Amendment. Nor is it in the competence of the courts under our constitutional scheme to approve, * * *, regulate, or in any manner control sermons delivered at religious

> meetings * * *. To call the words which one minister speaks to his congregation a sermon, immune from regulation, and the words of another minister an address, subject to regulation, is merely an indirect way of preferring one religion over another.

The activities of Petitioner complained of by the Respondent are concededly neither illegal nor immoral. The Respondent asserts unequivocally that the only disqualifying characteristic of Petitioner's religious activities is that they are political. Petitioner believes that Section 501(c)(3) neither requires nor permits the Respondent to categorize admittedly religious activities as political or nonpolitical and allow or disallow tax exemption solely on that basis. Such an interpretation is in contravention of both the Establishment and Free Exercise Clauses in the First Amendment.

As in *Walz*, it is not necessary here to reach the question whether the Free Exercise Clause bars all taxation, income or otherwise, of organizations devoted exclusively to religious teachings and practices. It is sufficient for the Court to determine, as we believe it should, that if the government does accord exemption it may not withdraw it simply because the organization devotes its efforts and activities towards the furtherance of the religious purpose for which it was formed.

c. *Other First Amendment Rights*

This case raises issues not only representing the Religion Clauses but also the other First Amendment rights of speech, press, assembly, association and petition. The recent decisions of this Court are unanimous to the effect that

the government may not bargain with its citizens for the waiver of inherent First Amendment rights in exchange for the grant of some governmental benefit. Among the many cases which can be cited in support of this proposition are *Perry* v. *Sindermann,* 408 U.S. 593, 597 (1972); *Pickering* v. *Board of Education,* 391 U.S. 563 (1968); *Keyishian* v. *Board of Regents,* 385 U.S. 589 (1967); *Baggett* v. *Bullitt,* 377 U.S. 360 (1964); *Baird* v. *State Bar of Arizona,* 401 U.S. 1 (1971); *Konigsberg* v. *State Bar,* 353 U.S. 252 (1957); *Schware* v. *Board of Bar Examiners,* 353 U.S. 232 (1957).

d. Due Process of Law

There are at least two ways in which the Court of Appeals' decision violates the Due Process Clause of the Fifth Amendment. It is well settled that where the government seeks to impose a sanction either by way of a denial of a right or forfeiture of a privilege, the Due Process Clause requires the government to specify clearly without vagueness or unnecessary broadness the conduct or behavior which is sought to be inhibited. This is particularly so where that conduct is within the ambit of protection of the First Amendment. *Burstyn* v. *Wilson,* 343 U.S. 495 (1952).

Petitioner in this case and all other organizations exercising rights guaranteed by the First Amendment may not be required to gamble their continued existence on guessing what the government, or more particularly the government official charged with administering or enforcing the particular law, had in mind. This, of course, is the case in the present situation. Section 501(c)(3) does

not specify what constitutes "influencing legislation through propaganda or otherwise." Nor is it any clearer as to what "substantial" means. The present controversy presents almost a classic case history. The various IRS agents who, over the decade between 1953 and 1963, audited Petitioner's operations numerous times, reached one conclusion. The National Office of the IRS reached a contrary conclusion, but experienced a partial change of mind in midstream; it came around to agreeing with the other IRS officials that Petitioner had not violated the purpose and operation provision but disagreed with them and held that it had violated the substantiality and political campaign prohibitions. The District Court on the same evidence found that the pre-1963 IRS had been correct on all points. The Court of Appeals found that the District Court and the pre-1963 IRS officials had been incorrect on the second and third points and found it unnecessary to decide whether they had been correct on the first. While supporting post-1963 National Office officials in the decision to revoke, the Court of Appeals disagreed that the term "substantial" required a percentage test.

With such divergent and irreconcilable results no conclusion is possible other than that the statute, at least as construed and applied by the Court of Appeals, does not comply with the requirement of due process of law.

A second violation of due process is inherent in the "substantiality" provision itself. While the Court of Appeals eschewed translating that provision into percentage terms, obviously "substantial" must have a quantitative or qualitative mathematical meaning in relation to the total

operations of a tax exempt organization. This constitutes an unjustifiable discrimination against small churches who necessarily are extremely limited to the extent of effort they can expend in teaching and preaching divine truths as they relate to contemporary public issues. It would discriminate against the poor, rural, or city store-front churches, whose voices need most to be heard by those entrusted with governmental responsibilities to provide for all the equal protection of the laws. A rich church or association of religious organizations could spend $100,000.00 and comply with the statute, while a poor church could run afoul by spending $1,000.00 on allegedly political activities.

4. Unconstitutional Discrimination

Certainly the IRS has the obligation to take the necessary precautions to insure compliance with the tax laws. But, just as certainly, Petitioner has the right to an orderly investigation and fair treatment by a federal agency. One of the questions presented in this petition is what is a reasonable and constitutional investigation.

Petitioner believes that the investigation and revocation of its exemption by the IRS were procedurally unreasonable and unconstitutional. The Findings of Fact by the District Court (App. A, *infra,* pp. 10a-25a) show a course of conduct by the IRS which could lead to only one conclusion —revocation. It is apparent from a reading of this history that no other conclusion was acceptable to the National Office. The District Court determined that Section 501(c)(3) as interpreted had been used as an oppressive tool by the IRS against Petitioner. (App. A, *infra,* p. 28a)

The sovereign is required by the Due Process Clause to be reasonable, fair and just in its treatment of its citizens. Equal protection of the laws was afforded to persons discriminated against by the federal government in *Bolling* v. *Sharpe,* 347 U.S. 497 (1954), and discrimination by segregation of the races was determined to be a denial of due process. *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886), presented a case of discrimination against a nationality. It appears that in the case at bar unconstitutional discrimination was based on the religious views of Petitioner. *Cf. Bolling, supra.*

Regardless of why Petitioner was so treated by the IRS, the glaring point is the fact of such treatment.

The federal government has at its call an awesome power to destroy. This case shows how this power, unfettered by procedural requirements, can be used to discriminate against and arbitrarily destroy a religious congregation.[11]

5. Retroactive Application

In view of the fact that the government has conceded that Petitioner never waivered from the religious purposes for which it was formed and conducted its operation without change in manner or proportion, we submit that it was a clear abuse of discretion to impose liability retroactively. We can think of no principle of equity which allows retroactive punishment for conduct which the government conceded was lawful when undertaken. In view of the exhaus-

11. *Cf. United States* v. *Heffner,* 420 F.2d 809 (4th Cir. 1970), and *United States* v. *Leahey,* 434 F.2d 7 (1st Cir. 1970). *But cf. Rosenburg* v. *Commissioner,* 450 F.2d 529 (10th Cir. 1971).

tive examinations made over the years by the IRS, it is unimaginable that anything Petitioner had done during the period while it was under surveillance escaped the attention of the IRS officials. We can think of no clearer case for the operation of the equitable principle of estoppel.

Conclusion

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

Appendix A

Findings of Fact and Conclusions of Law of the District Court

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

No. 67-C-114

CHRISTIAN ECHOES NATIONAL MINISTRY, INC., a Religious Corporation,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Filed: June 24, 1971

Findings of Fact and Conclusions of Law

From the pleadings (including the Pre-Trial Order and Amendments), depositions, answers to interrogatories on file, interrogation of counsel, the evidence introduced during the trial of this case, the Report of the Special Master appointed herein to review the exhibits and to report to the Court, and the Court having independently reviewed the exhibits and Report, the Court makes the following material Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Court finds this is an action brought by plaintiff, Christian Echoes National Ministry, Inc., against defendant, United States of America, for recovery of Federal In-

surance Contribution Act (FICA) taxes assessed and collected from plaintiff by defendant for the years 1961, 1963, 1964, 1965, 1966, 1967 and 1968. Plaintiff has paid, pursuant to retroactive assessments for periods prior to September 22, 1966, and pursuant to timely filed Employer's Quarterly Tax Returns, Form 941, subsequent to that date, FICA taxes for the periods indicated:

1961—All quarters	$10,972.53
1963—All quarters	10,038.71
1964—All quarters	10,483.11
1965—All quarters	13,618.18
1966—Quarter ending March 31	5,728.52
Quarter ending June 30	5,022.34
September 22 through September 30	354.30
Quarter ending September 30	5,828.31
Quarter ending December 31	4,351.61
1967—Quarter ending March 31	4,770.59
Quarter ending June 30	3,781.48
Quarter ending September 30	4,238.99
Quarter ending December 31	4,341.13
1968—Quarter ending March 31	5,150.73
Quarter ending June 30	4,546.72
Quarter ending September 30	6,086.48
Quarter ending December 31	4,179.35

The total amount of plaintiff's claim is $103,493.08 plus statutory interest. Claims for refund of taxes have been timely filed and disallowed or more than six months have elapsed between the respective dates of filing claims and the date of filing plaintiff's Third Amended Complaint.

2. Plaintiff is the sole owner of the claims for refund pertaining to the above taxes.

3. Plaintiff, Christian Echoes National Ministry, Inc., with headquarters in the City of Tulsa, Oklahoma, is a cor-

poration duly organized under Oklahoma laws authorizing organization of nonprofit corporations for religious and educational purposes, specifically 18 Okla. Stat. §§541-575. A Certificate of Incorporation was issued by the State of Oklahoma to Christian Echoes Ministry, Inc., on April 2, 1951. An Amended Certificate of Incorporation was issued to Christian Echoes National Ministry, Inc., formerly Christian Echoes Ministry, Inc., on September 5, 1952.

4. The Amended Articles of Incorporation (P. Ex. 1), among other provisions, contain the following:

> "The purposes for which this corporation is formed are to promote the Articles of Faith set forth in the *Bylaws* by establishing and maintaining weekly religious radio and television broadcasts, a national religious magazine and other religious publications, religious educational institutions, evangelistic campaigns, and meetings for the promotion of the social and spiritual welfare of the community, state and nation. * * *"

5. Plaintiff is controlled and managed by a board of trustees and corporate officers. It has adopted formal corporate Bylaws and Articles of Faith (P. Ex. 1) reciting, among other things:

> "ARTICLE III
>
> "ARTICLES OF FAITH OF CHRISTIAN ECHOES NATIONAL MINISTRY
>
> "We believe in God, Supreme and Eternal, and in Jesus Christ as His Son, perfect Deity, and in the Holy Comforter and Challenger of this age, The Holy Ghost, and in the Bible as the inspired Word of God.

Appendix A

"We believe that the solution of the World's problems, economic, political and spiritual, is found by the application of Christian Teachings in the lives of men and nations rather than in political ideologies of any kind.

"We believe in the Twentieth Century Reformation to combat apostate conditions within the Church.

"We realize atheistic world forces seek the destruction and overthrow of all the religions of the World, including particularly that founded upon the teachings of Jesus Christ. The same forces seek also the destruction of all free governments, in which the lives and property of the people are protected by civil, moral and spiritual law.

"We associate ourselves together to educate and proclaim the essential truths of Christianity, and the doctrine: Jesus Christ is the Hope of the World and America is God's Greatest Nation under the Living Son.

"We believe in the real spiritual unity in Christ of all redeemed by his precious blood.

"We believe in constitutional government, whereby religious as well as other freedoms of mankind are preserved and protected.

"We believe in the fundamentals of New Testament Christianity, and we propose to promulgate the eternal truths thereof at all costs."

The preachings and teachings of the organization have been addressed to that theology continually and uninterruptedly since the date of incorporation.

6. Plaintiff's founder and president is the Rev. Dr. Billy James Hargis, an ordained minister of the Gospel of Jesus Christ. Dr. Hargis is authorized and does perform all sacerdotal functions on behalf of plaintiff. His

training and experience qualify him as an expert witness in the areas of religion and his expert opinions concerning religion are admissible in evidence. Dr. Hargis' personal views are those of the corporation. Plaintiff's purposes as expressed by Dr. Hargis' testimony (Tr. 84, 85) during the trial were as follows:

> "Because I became concerned over the fact that Communism was the most effective opponent that the Church of Jesus Christ ever had, and if Communists took over the United States this would destroy freedom of worship, religious exercises, it would be the end of missionary activities, Christian colleges, Christian benevolent organizations. I saw in Communism a more formidable opponent than anything the church faced. Also I have always been a student of Bible prophecy and from my study of the Old and New Testament I am aware of the fact that there is to be a despotic world government in which the freedom of religion is eradicated and there shall be a world church which denies the historic Christian faith. I was familiar with the Bible prophecy, this has always been a special study of mine, and I could see in Communism and its demands for Communist world government, and I could see in Communism this demand for an amalgamated world religion that was subservient, the fulfillment of divine prophecy a world church, a world government that would serve Satan instead of God, so I began to write on the prophetic. My interest in the fight against Communism first started from the articles and sermons I wrote on prophecy. * * *"

7. Rev. David Noebel, a member of plaintiff's headquarters staff, is an ordained minister of the Gospel of Jesus Christ. He is authorized and does perform all sacer-

dotal functions on behalf of plaintiff. Other ordained ministers on plantiff's staff perform like functions.

8. During the years in litigation plaintiff, through its representatives, has conducted religious revivals extending through a weekend or a full week and rallies which are one-night religious meetings. These are held in various churches throughout the United States, sponsored and supported by various local churches, church congregations and pastors. Where local church space is inadequate, these meetings are held in public halls.

9. Plaintiff does not contact or make arrangements with political organizations to conduct a revival or rally. These are consistently arranged through clergymen in local churches in various cities. No rallies or revivals have been sponsored by or in the name of any political organization nor have they been sponsored by any candidate for public office nor has a rally been conducted in support of any particular legislation. Plaintiff's people work with the religious, and not the political community. Dr. Hargis ordinarily speaks about twenty days out of thirty away from Tulsa, mostly in churches. During those twenty days away he may speak two or three times a day. He preaches approximately one thousand sermons each year. Staff pastors travel widely in proclaiming the gospel espoused by plaintiff's followers. From the time of the formation of plaintiff, the organization each week has, through Dr. Hargis or staff pastors, conducted Sunday worship services in Tulsa.

10. In addition to plaintiff's activities conducting revivals, rallies, Sunday worship services and other functions usually performed by a local church of the Christian gospel, plaintiff conducts an annual convention of its followers, an annual leadership school, summer sessions for young peo-

ple, publishes two magazines, and delivers daily and weekly radio broadcasts.

11. With the exception of support of the proposed Becker Amendment to the United States Constitution relating to voluntary prayer and Bible reading in public schools, plaintiff has not engaged in attempts to influence legislation. Plaintiff does not lobby in Washington, has not endorsed a political candidate, and has not instructed its followers as to how to vote but only to vote. Plaintiff has never received compensation of any nature for the support of any political candidate or legislation. No member of plaintiff has ever testified before a congressional committee, a legislative committee, a council, or any form of local, city, county, or state government.

12. Plaintiff's activities are directed toward the dissemination of biblical concepts of the Christian faith as stated in the Articles of Faith of plaintiff and according to the belief and understanding of the Bible by its adherents. Plaintiff's battle against Communism, Socialism, and Political Liberalism, as those terms are defined by the organization, is based upon the belief that Communism, Socialism and Political Liberalism make direct attacks against the Christian faith espoused by the supporters of plaintiff and the Church as they conceive it to be ordained of God. Plaintiff's activities have been directed toward achieving its religious goals.

13. Plaintiff's organization and structure, its practices, precepts, and activities provide all the necessary elements of a "church" in the ordinary acceptance of the term and as used in the Internal Revenue Code of 1954, its amendments and applicable regulations. Plaintiff's followers together with its ordained pastors clearly constitute a congregation the same as any local church.

Appendix A

14. On May 22, 1952, plaintiff filed an application (P. Ex. 1) dated March 28, 1952, for income tax exemption under §101(6) of the 1939 Internal Revenue Code, now §501 (c)(3) of the Internal Revenue Code of 1954. The application stated the specific purposes for which the organization was formed were:

> "Religious non-profit organization. Organization maintains weekly religious radio broadcasts, religious publications, religious educational institutions. Engages in religious and evangelistic work in general."

Question No. 10 recited: "State all the activities in which the organization is presently engaged." Plaintiff stated:

> "Weekly religious broadcast, Monthly Religious magazine, Religious Books and Pamphlets, Religious Summer Camp, Church Revivals, Establishing Church College."

These answers followed generally the stated purposes of plaintiff in its written Articles of Incorporation.

The application required plaintiff to attach a copy of its Articles of Incorporation, Bylaws, and other corporate documents setting forth the aims and purposes of the organization. Representative samples of copies of magazines, pamphlets, and radio sermons published by plaintiff during the previous two years were also submitted to the Internal Revenue Service.

Plaintiff attached a complete statement of its financial receipts and expenditures from the beginning of its activities—some one and a half years of operation. Plaintiff also furnished an affidavit by Dr. Hargis consisting of four and one-half legal size pages describing in detail the nature and scope of the activities of plaintiff from the time its operations began.

15. One of plaintiff's publications, "Communism Exposed," an exhibit attached to the exemption application, was attached for the purpose of informing the IRS of the basic religious tenets and the nature and scope of the anti-Communist program of Christian Echoes National Ministry, Inc.

16. The IRS was supplied the complete text of Dr. Hargis' sermon entitled "They Cast Four Anchors Out of the Stern." The sermon urges that in order to save the country four anchors were needed: patriotism, gratitude, faith, and answered prayer. This document, additionally, revealed the nature of plaintiff's work product.

17. On March 12, 1953, on the basis of the application for tax exempt status, the Internal Revenue Service issued to plaintiff its letter of exemption stating that plaintiff was:

> "[O]rganized and operated exclusively for religious and education purposes [and] exempt from Federal income tax and qualified for charitable contributions under the provisions of sections 101(6) and 23(o) and (q) of the 1939 Internal Revenue Code." (P. Ex. 24; See also Pre-Trial Order ¶III (f), (g), 10-1-69.)

The Internal Revenue Service issued to plaintiff its tax exemption letter based upon findings of facts from investigations by the Internal Revenue Service that plaintiff at the time of issuance of the letter of exemption was both organized and operated exclusively for religious and educational purposes, and had been so operating nearly two years. Radio scripts, sermons, magazines, pamphlets and other publications, together with plaintiff's financial reports, were examined by the National Office of the Internal Revenue Service in Washington prior to its issuing the exemption letter.

Appendix A

18. In April, 1962, the National Office of the Internal Revenue Service ordered an extensive examination of plaintiff's activities, with emphasis at that time on its financial affairs. Revenue Agent John S. Donovan, of the Tulsa office, was dispatched to investigate plaintiff. Agent Donovan spent 92 hours reviewing the 1959, 1960, and 1961 operations. He prepared a "No Change Report" on IRS Form 886-A (P. Ex. 5). In his handwritten report Agent Donovan, after discussing his examination, wrote:

> "From available information it appears that operations are for all practical purposes the same as when the exemption was granted to the organization. Information submitted with the application has been compared with that submitted with letter and except for volume there is the same basic purpose."

19. A few weeks later, Agent Donovan was directed to re-examine plaintiff. As a result of his second examination, on November 27, 1962, he again filed a "No Change Report," this time IRS Form 1904 (P. Ex. 6), covering the same operating years—1959, 1960, and 1961. In his re-examination Agent Donovan spent an additional 151 hours, and stated:

> "Investigation extended over a period of several months and it appears that present operations are basically the same as when the exemption was granted by the National Office March 12, 1953. In view of the foregoing no change is recommended in the exempt status of Christian Echoes National Ministry, Inc. at this time."

20. The National Office of the Internal Revenue Service in Washington, D.C., returned the case file to its Tulsa office for further audit on May 7, 1963 (P. Ex. 7 and 8),

stating "additional facts need to be secured and questions answered."

21. This time Agent John Donovan and Agent Harry E. Riggs were sent into the field to make a further examination of plaintiff's financial affairs and other activities. A joint report, dated July 15, 1963 (P. Ex. 9), signed by both revenue agents, stated in part:

> "After due consideration of the information submitted, the National Office granted Christian Echoes National Ministry, Inc., an exemption letter under the provisions of Section 101(6) of the I.R.C. of 1939, as it was shown that the corporation was organized and operated exclusively for religious and educational purposes. * * *
>
> "The organization has maintained the purposes as set forth above during the years under review.
>
> "The organization has been operated exclusively for the teaching of faith in God and educating and informing the public on the dangers of Communism and Socialism. * * *
>
> "In operation tests, it is concluded that the Christian Echoes Ministry, operating as 'Christian Crusade' is entitled to exempt organization status as an educational organization. * * *"

22. Following the July 15, 1963, joint report which for the third consecutive time declared plaintiff to be operating within its exemption, Mr. Albert F. Schrempp, Chief of the Audit Division in the IRS District Office in Oklahoma City, on September 16, 1963, wrote a "memorandum for the file" (P. Ex. 10) in which he stated:

> "Larry Stewart called today from the Regional [Dallas] Office and stated that he has received a

letter from the National Office indicating that there's even more particular interest in this case than has previously been evidence—they [the National Office] are asking for copies of specific publications of Hargis and other information.

"I told him we had suspended any further action on the case and would continue to suspend it until we received the National Office letter he is sending to us. He asked that we suspend action even beyond that point—until we hear from him as to the line of approach the National Office wants us to take in examining this organization."

23. On September 18, 1963, Mr. Schrempp wrote another memorandum (P. Ex. 11) to the file, stating:

"Larry Stewart called again this morning about this examination. He wanted to talk to me in general and get a little background about what approach we have used in our examination thus far—whether Hargis has cooperated or dragged his feet, etc. I gave him some additional information out of the file, including the National Office April 1962 request which was the immediate trigger for the examination. I also called his attention to Dan Cross' June 1962 memorandum in which he indicated that the National Office was particularly interested in this case from the political action standpoint.

"Larry ended up stating that they will get the National Office letter he previously referred to, up to us without delay, but we should not go ahead with the examination until we have heard further from Larry, probably by telephone, as to the method of approach we should take from here on out in the examination. He also stated that after we reinsti-

tute the examination, we should definitely not close it out without first allowing the National Office, as well as the Regional Office, to take a look at the file."

24. On September 30, 1963, Mr. Schrempp wrote another memorandum (P. Ex. 12), wherein he stated:

"Larry Stewart, the ARC-Audit, called me again today about this case. He stated that he had talked to the National Office last week and had determined that we could go ahead with the examination and with the securing of the information which the National Office asked us to obtain.

"Larry stated that we did not need to take any particular approach in obtaining the information from the organization. If they ask about it we can let them know that although the Internal Revenue Service does not have a 'drive' going on exempt organizations, we are in the process of making more examinations of this type organization throughout the country. Should they ask, we may also let them know that the examinations are not being limited to the financial operations but also are going into the types of activities which the organizations are conducting. We can also tell them that the information and documents which we are asking for will be sent on in to the National Office and that we won't close the case until the National Office has had an opportunity to study these documents. Although we don't know how long the National Office may take, it could be two or three months before they have completed any study they make of what we submit to them.

"Larry also stated that it wouldn't be necessary for us to obtain the information for a period extending over three or four years. If we can get com-

plete information involving the last financial year which we are examining, this should be sufficient to furnish the National Office.

"I am instructing the Chief, Review to have Frank Michael send the case back to Tulsa for the necessary action to obtain the materials and information desired by the National Office—and also for whatever purpose Michael was preparing to send the case back when this current request from the National Office was received. In sending it back, we should ask the agent to give first priority to obtaining the documents and information which the National Office wants and get it on the way in to them before he goes into the continuation of his examination."

25. Following specific administrative directives from the National Office, Agent Riggs next performed the additional and separate duty of securing all of plaintiff's publications, including sermons, magazines, pamphlets, books, and other material. On October 29, 1963, Agent Riggs forwarded these documents with a written transmittal "memorandum" (P. Ex. 14) on U. S. Government Optional Form No. 10, to the Chief, Audit Division in the Oklahoma City District Office (P. Ex. 15), stating he "estimated that the balance of information can be forwarded on or before November 6, 1963." This memorandum was sent to the Assistant Commissioner (Compliance) in the National Office of the IRS on October 30, 1963 (P. Ex. 15).

26. On October 29, 1963, the Oklahoma City District Office wrote to its Regional Office (P. Ex. 17):

"Christian Echoes Ministry is under active examination. Most of publications requested by the National Office have been secured and will be forwarded direct to National Office tomorrow.

"Estimate that remainder of publications and information requested will be available within two weeks."

27. On November 6, 1963, Agent Riggs filed a "memorandum" (P. Ex. 15), including 35 pages of exhibits showing the names of all of the publications of plaintiff, the radio stations over which sermons of plaintiff have been preached, the amount of money paid by plaintiff to each radio station, and all financial records of plaintiff for the years 1959, 1960, 1961, and 1962. After this re-investigation of several months' duration, Agent Riggs reported (P. Ex. 15) in this memorandum:

"There were no radio speeches found where a listener was urged to vote for a certain candidate or where certain legislation was advocated."

The November 6, 1963, memorandum and enclosures were forwarded to the National Office on November 15, 1963 (P. Ex. 15).

28. On November 18, 1963, the Oklahoma City District Office wrote to its Tulsa office (P. Ex. 16):

"Investigation of Political Activities of Certain Section 501(c)(3) Organizations.

"The publications and information submitted by Agent Riggs have been forwarded to the National Office.

"I am returning your sensitive case report on this case and suggest that it be rewritten to show that all of the information requested by the National Office has been secured and forwarded to Washington and that the agent will proceed with the examination. Upon completion of the examination, our findings will not be discussed with the taxpayer. On the

contrary, the case will be referred to the National Office under technical advice procedure in accordance with the Assistant Commissioner's instructions.

"Instructions to complete the case and submit it to the National Office under the technical advice procedure will be found in the second full paragraph on Page 2 of the memorandum from the Assistant Commissioner (Compliance). A copy of this memorandum should be in the case file which Agent Riggs has.

"If Agent Riggs cannot complete his examination and submit the case to Review by December 15, I would like a status report on the progress made. /s/ Roy Wade, Jr."

29. On November 27, 1963 three weeks after submitting his specially requested reports of October 29 and November 6, 1963, Agent Riggs made his final report (P. Ex. 18) concerning this plaintiff's operations, with this conclusion:

"All of the activities [of plaintiff] have been confined to the teaching against Communism and for a belief in God. Information in television, radio broadcasts, publications and lectures all contain the main theme of Anti-Communism. There are a number of sermons broadcast on the radio and the publications contain religious articles. * * *

"As far as can be determined the organization operates within the exemption letter as a religious and educational organization. It continues to operate under the purposes set forth in its application as noted in the second paragraph of this memorandum. No statements were found in publications, radio and television scripts or books that advocated the election of a particular candidate or the passage of legislation."

30. On December 11, 1963, the District Office in Oklahoma City returned plaintiff's exemption application file to the National Office under cover letter of Mr. Schrempp, the letter carrying a personal notation (P. Ex. 19):

> "Note for the record: Gunod called me December 11, 1963, and said they needed exempt application files for the Rulings Division. They seldom send them out, but did in this case last year when they started on the 'philosophical-political' approach. I told them we would send it along immediately and as soon as we finished looking over the agent's current report in review [report dated November 27, 1963]. We'll send the current exam file."

31. On December 20, 1963, the Oklahoma City District Director's Office of the IRS sent the following letter to the National Office (P. Ex. 20):

> "The examination of Christian Echoes Ministry, Inc. has been completed and the administrative file is forwarded herewith for association and review with the publications and information submitted on October 30, 1963 and November 15, 1963.
>
> "Technical advice is requested concerning the status of this organization under the provisions of Revenue Procedure 62-29, I.R.B. 1962-47, 18, in accordance with the memorandum from the Assistant Commissioner (Compliance) dated September 5, 1963.
>
> "Consent, Form 872, covering annual information return Form 990-A, for the year ending December 31, 1960 has been solicited and the original will be forwarded for association with the return as soon as we receive it."

32. The National Office directed the District Office in Oklahoma City to make a request for "technical advice" to the National Office under the provisions of Revenue Procedure 62-29 I.R.B. 1962-47, 18. The Assistant Commissioner (Compliance) in the Washington Office thereupon issued a memorandum dated September 5, 1963, to the District Office in Oklahoma City as to how to proceed since the investigation had reached a dead-end through the final reports of Agents Donovan and Riggs. The National Office itself issued directives that the Oklahoma City District Office make the formal request.

33. On November 6, 1964, Mr. Singleton Wolfe, Assistant Commissioner (Compliance) in the National Office, placed a long distance conference telephone call to the administrative head of the Regional Office of the IRS in Dallas, the District Director of the IRS at Oklahoma City, and certain staff members in each office. Among other exhibits introduced by plaintiff is a copy of a written memorandum of the conference call (P. Ex. 22). This document would tend to reveal the methods used by the National Office of the Internal Revenue Service to effect the revocation of plaintiff's tax exemption. It reveals a denial of due process to plaintiff. Mr. Wolfe stated to his subordinates in Dallas and Oklahoma City that the National Office had prepared a written memorandum (P. Ex. 23) embodying therein a proposed letter to be sent from the Oklahoma District Office to plaintiff, revoking plaintiff's tax exemption. The files of the IRS revealed that in the long distance conference telephone call the National Office directed its District Office in Oklahoma City to perform the following (quoting from the IRS written memorandum of the call) (P. Ex. 22):

> "Here are some more points which we did not want to put in the memorandum.

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"1. We would like to have the letter issued no later than Friday, November 13.

"2. In the memorandum we have mentioned the development of additional material. This should be done during the conference or after the conference. In other words, we don't think any further field audit contact should be made prior to the conference.

"3. In the meeting that we had with you on Sept. 19 we indicated that there would be a legal memorandum forthcoming. This memorandum has not been developed and will not be forthcoming. We have discussed the case with Counsel and they have generally agreed with it, but the legal memorandum is not ready. We hope to get it at a later date.

"We are sending you, I think, all the information you really need to hold the conference and develop your report.

"4. If the taxpayer's representative or Hargis should happen to be there and ask you whether the National Office has considered this matter, there is certainly no prohibition against telling him the file has been reviewed by the National Office. In other words, I don't think you should try to cover up the fact that this has been reviewed by the National Office. Somebody could have leaked it out. There are numerous ways these people have of finding out if the National Office has looked at something. I certainly think if they press you on this you should be forthright about it and tell them the National Office has reviewed the file.

"5. There is a draft of the suggested letter in the package. You will sign the suggested letter to the Christian Echoes Ministry, Inc. If you have any problems, get in touch with Mr. Davis or call me.

"6. We do not believe you should show Hargis or his representatives any material developed by the National Office.

"7. * * * In our memorandum we said we have a case analysis. We don't think you should show the case analysis to them, but the material and pamphlets—you are certainly free to show them that. The case analysis is backed up by this material. There is nothing in the case analysis that is not backed up by some material furnished. Instead of going into the case analysis, use that material as the background for your conference. Use the Agent's materials secured from or furnished by Hargis. The whole case must be based on his activities as shown by the materials he has furnished. The case analysis is developed entirely from the material you have either secured from him or he has furnished—primarily 99.44% if we have to go that far. Also—while I am on the case analysis—this is cross-referenced to the details furnished—to the pamphlets and other materials. We have a complete cross-reference.

"8. We would like to have a feedback report as well as a copy of the final letter which is mailed to the taxpayer. We would like for this to be sent to Mr. Marshall Davis.

"9. We would also appreciate a conference summary if a District conference is held.

* * *

"Mr. WOLFE. * * * If you can develop the case file it would be of material help in finally settling or disposing of the case—whether in your office or here."

The above constitute directives and not technical advice. The memorandum of the telephone conversation reveals

the administrative decision to revoke plaintiff's tax exemption was made by the National Office before sufficient evidence had been accumulated. It discloses the decision was made without formal advice of legal counsel within the Internal Revenue Service. The decision was arbitrary as well as discriminatory and is evidence of denial of due process.

34. Following those directives from the National Office, Mr. Clyde L. Bickerstaff, the District Director in Oklahoma City, on November 13, 1964, mailed the letter composed in the National Office to plaintiff advising that the Internal Revenue Service had concluded that plaintiff did not qualify under the applicable provisions of law for tax exemption and that the Service proposed to revoke the previous ruling in accordance with procedures outlined in Revenue Procedures 62-30. The November 13, 1964, revocation letter (P. Ex. 24) stated among other things:

> *"Exemption History*
>
> "Based on evidence submitted by you in support of your March 28, 1952, application for a ruling as to your tax status, the Internal Revenue Service ruled on March 12, 1953, that you were exempt from Federal income tax and qualified for charitable contributions under the provisions of sections 101(6) and 23 (o) and (q) of the 1939 Internal Revenue Code.
>
> "You were classified in the 1953 ruling letter as 'organized and operated exclusively for religious and educational purposes.' * * *
>
> * * *

Appendix A

"Basis of Denial of Exempt Status

"On the basis of a review of the information submitted by your organization relating to your operations during 1961, 1962 and 1963, we have concluded:

"(1) You are not operated exclusively for religious, educational or charitable purposes within the meaning of sections 501(c)(3) and 170(c) of the Internal Revenue Code. * * *"

35. The decision of the National Office of the Internal Revenue Service was based on a "case analysis" (P. Ex. 22, ¶7) of the work product of plaintiff, that is, what plaintiff said by words in its sermons, its radio broadcasts, its magazines, and other publications. Defendant urges the Court to decide this case upon the single isolated issue of distilling and interpreting the written and spoken words of plaintiff. Defendant thereby has at no stage of these proceedings raised the issue of sincerity of plaintiff's belief, and it is not necessary that the Court make a finding on such issue.

36. On June 25, 1965, plaintiff filed a formal protest with the District Director of the Internal Revenue Service at Oklahoma City. A conference was held and the protest was overruled. A conference was then held at the National Office of the Internal Revenue Service in Washington, D.C., and again plaintiff's protest was overruled. These hearings were not held pursuant to Rev. Proc. 62-29 (now Rev. Proc. 67-2) but were all held *after* the IRS had already made its decision to revoke plaintiff's exemption and had so notified plaintiff.

37. The Internal Revenue Service next levied FICA taxes against plaintiff on December 7, 1967 (P. Ex. 56, 57) and plaintiff appealed this to the Appellate Division in

Oklahoma City on December 28, 1967 (P. Ex. 55) to protest the levying of these taxes. Mr. O. L. Green, Conferee, Appellate Division, Internal Revenue Service, Oklahoma City, conducted the hearing on January 17, 1968. The objections and protests to the assessment of the taxes were overruled and telephoned to the Austin, Texas, Computer Office of the IRS on the afternoon of January 17, 1968, although the official decision of the Internal Revenue Service Appellate Division was not prepared and dispatched until one day later, January 18, 1968.

38. For the assistance of District Directors in making examinations and audits of organizations holding tax exemption determination letters, the Internal Revenue Service has adopted Revenue Procedures applicable to this case. These are Revenue Procedure 62-29 which was superseded on January 3, 1967, by Revenue Procedure 67-2 (P. Ex. 29) and Revenue Procedures 62-30 and 63-30 which were superseded by Revenue Procedure 67-3 (P. Ex. 29-A) on January 3, 1967. Material portions of the 1967 procedures are essentially the same as the 1962 and 1963 procedures. Under these procedures when a District Director in any case under examination is uncertain of applicable law, or procedure, or has made a decision with which the taxpayer disagrees, either the taxpayer or the District Director himself may refer the question together with a statement of the facts and issues to the office of the Assistant Commissioner (Technical) of the Internal Revenue Service in Washington, D.C., for technical and professional advice.

These procedures are established for the purpose of providing local IRS offices and their personnel with consistent technical and professional advice on tax matters (Rev. Proc. 67-2, §2.01). The National Office serves in this instance, however, only in an advisory capacity to the District Office, not an administrative one. The District

Office retains the authority for final decision making. In plaintiff's case, however, the National Office preempted this authority and made the final decision itself. This decision was contrary to four previous conclusions reached by experienced investigating officials of the Tulsa Office of the Internal Revenue Service favorable to plaintiff.

If a District Director of the IRS initiates the procedure, he is required to notify the taxpayer of his action, furnish a copy of his papers, including a copy of the Revenue Agent's report, to the taxpayer, and give taxpayer ten days' notice in which to prepare what the taxpayer may believe to be a more correct statement of the facts and issues of law involved (Rev. Proc. 67-2, §§4.05, 4.06). Under these procedures the organization under examination is entitled as a matter of right, to a conference in the National Office of the Assistant Commissioner (Technical) before a decision is made in order to present its side of the case (§4.09). The only exception to this right to a conference is when it appears that the question is a matter of internal concern within the Internal Revenue Service Office or where it could be prejudicial to the interest of the Internal Revenue Service, such as cases involving fraud or jeopardy assessments (§4.10). Neither of these reasons is applicable here and the Internal Revenue Service denied plaintiff its rights provided by the Service's own published procedures.

39. A further reading of Revenue Procedures 67-2 and 67-3 shows that portions of these procedures were ignored by the Internal Revenue Service. The Service did not follow its own rules of procedure in that it already had two reports from Revenue Agent Donovan and a report made jointly by Agents Donovan and Riggs dated July 7, 1963, all of which exonerated plaintiff completely from any violation of Section 501(c)(3) described above. Agent Riggs

was thereafter directed during the last half of 1963 to make a fourth audit and examination of plaintiff's activities. Mr. Riggs did not finish his report of this investigation until November 27, 1963, but cleared plaintiff not only as to the inurement test but also as to any political activities. Weeks before this time Agent Riggs had gone to plaintiff's headquarters pursuant to directives of the National Office, and gathered in all the books, magazines, tapes, records, sermons and other documents of plaintiff he thought the IRS wanted. Agent Riggs collected these, together with exhaustive financial information, and sent them through the Oklahoma City Office to the National Office on October 29 and November 6, 1963 (P. Ex. 14, 15), and, as previously instructed by the National Office, made no comment or recommendation upon them, except to state there was no evidence of support of political candidates or legislation. This failure of the Revenue Agent to make recommendations was a direct violation of IRS procedures and is further evidence of denial of due process to plaintiff.

40. The nature and scope of plaintiff's program of activities were apparently understood by the IRS in its conclusions and decision to exempt plaintiff from taxation in 1953. That program revealed plaintiff's spiritual belief is founded on the premise that Christianity is the Hope of the World, and that Communism, avowedly Anti-Christ, seeks to destroy the Christian Church and the United States. The nature of plaintiff's activities during the years involved in this suit, although those activities have been expanded by plaintiff's growth, is identical with the activities of plaintiff during the years preceding the issuance of the exemption letter.

41. Plaintiff raises the issue of retroactive assessments wherein, following the revocation of plaintiff's tax

exemption, the Commissioner assessed FICA taxes retroactively through 1961. This is a subordinate issue and the Court's findings on other issues favorable to plaintiff make it unnecessary for the Court to consider such issue.

42. Defendant makes no contention, nor has there been any proof offered that the Internal Revenue Service was mistaken in interpreting the material submitted and plaintiff's right to tax exemption in 1953, or that the Internal Revenue Service was proceeding under mistake of fact or law at the time the original exemption was granted by it in 1953.

43. Defendant has characterized certain of plaintiff's activities during the years involved in this suit as urging the public to contact members of legislative bodies for the purpose of proposing, supporting or opposing legislation. Plaintiff has characterized the same activities as taking stands on issues of the day concerning matters which it construes to threaten its religious beliefs. The Court finds that these activities have resulted from plaintiff's religious beliefs and were merely incidental to the exercise of its religion and the expression and dissemination of its understanding of biblical concepts. The Court further finds that any such activities by plaintiff were insubstantial in relationship to the totality of plaintiff's activities.

44. Defendant, in describing and characterizing plaintiff's activities as political and non-religious, has in fact indicated a disagreement with the content and nature of what plaintiff has said and written. Defendant has thereby sponsored its own definitions of "religion" and "religious." Such definitions by defendant are impermissible. Administrative definitions of the terms "religion" and "religious" are conspicuously, and for good reason, omitted

from IRS Regulations. [See IRS Regulations, Internal Revenue Code of 1954 under §501(c)(3).]

45. Plaintiff's expression of opinion on "current issues or issues of the day" is not an act contemplated by prohibition against intervention in political campaigns or legislation and is not a violation of the provisions of Internal Revenue Code. Plaintiff believes the threat of Communism is a direct threat against the Christian religion and that plaintiff's Anti-Communist activities are representative of a dedication toward its religious activities. Churches and religious organizations cannot be isolated or insulated from the outstanding issues of the day and religious organizations should encourage their members and participants to take active stands and get involved as far as their religious beliefs are concerned and to fight against those things they believe to be anti-religious. Active current involvement by numerous churches and religious organizations is revealed in the daily press.

46. According to the uncontradicted testimony of plaintiff's witnesses, the National Council of Churches, the National Methodist Church, the National Presbyterian Church, and other national religious organizations, during the years in question, have taken stands on public issues opposite those taken by plaintiff. Those religious organizations are listed as exempt in Publication No. 78 of the Cumulative Bulletin currently published by the Internal Revenue Service, an official publication of the IRS setting forth organizations which are exempt from taxation under §501(c)(3) of the Internal Revenue Code of 1954 and its amendments. Although specifically requested by this Court during the trial herein, defendant has not furnished the Court with any reply as to this obvious disparity in treatment of religious organizations. One of the factors relating to defendant's arbitrary selection of plaintiff to be

investigated and exempt status revoked, according to defendant's counsel, is the fact plaintiff's smaller size lent itself to investigation, whereas many exempt organizations such as churches and associations of churches are so large and widespread as to effectively prohibit examination by the Internal Revenue Service (Tr. 36).

47. Defendant discriminated in the administration of Section 501(c)(3) of the Internal Revenue Code of 1954 by consciously and arbitrarily selecting plaintiff from other tax exempt organizations engaged in similar activities and revoking its tax exemption.

The evidence submitted would tend to show this plaintiff might have been chosen as an example, as charged in the complaint. The facts proved in this case by plaintiff establish an administration of the tax law by the Internal Revenue Service directed so exclusively against plaintiff as to warrant and require the finding that, whatever may have been the intent of §501(c)(3) of the Internal Revenue Code of 1954 when adopted, it has been applied against plaintiff in this case by the Internal Revenue Service as an oppressive tool.

48. Christian Echoes National Ministry, Inc., is organized and operated exclusively for religious and educational purposes as contemplated by §501(c)(3) of the Internal Revenue Code of 1954 and the applicable treasury regulations.

49. Defendant has stipulated in the Pre-Trial Order that no part of the net earnings of Christian Echoes National Ministry, Inc., inured, during the years here involved, to the benefit of any private shareholder or individual as contemplated by §501(c)(3) of the Internal Revenue Code of 1954 and the applicable treasury regulations.

Appendix A

50. The Court finds that any separation of functions of the plaintiff organization, such as the incorporation of Church of the Christian Crusade, Inc., subsequent to the notice of the Internal Revenue Service's intent to revoke its tax exempt status is no indication, proof or evidence that plaintiff was engaged in any activity prohibited by §501(c)(3) of the Internal Revenue Code of 1954 but was an effort by plaintiff to procure what protection was available under the Internal Revenue Code of 1954 from defendant's activities in attempting to close it down, and further reflected the expansion of activities of Dr. Hargis and his followers.

Conclusions of Law

1. The Court has jurisdiction of the subject matter and parties to this action.

2. Plaintiff is organized and operated exclusively for religious and educational purposes, no part of the net earnings of which inured during the years here involved to the benefit of any private shareholder or individual, no substantial part of the activities of which was carrying on propaganda, or otherwise attempting, to influence legislation, did not participate in, or intervene in (including the publishing and distributing of statements), any political campaign on behalf of any candidate for public office, all within the purview of §501(c)(3) of the Internal Revenue Code of 1954. *Girard Trust Co.* v. *Commissioner of Internal Revenue*, 122 F.2d 108 (3d Cir. 1941).

3. Plaintiff's organization and structure, its practices, precepts, and activities provide all the necessary elements of and is legally defined a "church" in the ordinary accepted meaning of the term and as used in the Internal Revenue Code of 1954, its amendments and applicable reg-

ulations. Dr. Billy James Hargis, founder of plaintiff, held the office of Pastor, and the other ordained ministers on plaintiff's staff were Assistant Pastors. Plaintiff's followers together with its ordained pastors constitute a congregation the same as any local church.

4. The activities of plaintiff are singularly motivated by the sincere religious conviction of plaintiff's followers. The Court having found as fact that plaintiff through its followers believes in the religious nature of its activities, neither defendant nor this Court may inquire into such activities and work product of plaintiff for the purpose of determining whether those activities claimed by plaintiff to be religious are religious or political and, if political, whether substantial, for the purpose of denying tax exempt status to plaintiff. To make such an inquiry would first require this Court to define the terms "religious" and "political," then separate plaintiff's activities into these two categories applying those labels thereto under definitions established by this Court. This action would require both a quantitative and qualitative analysis of plaintiff's activities. To do so would require an interpretation of the meaning of the church doctrine espoused by plaintiff and a determination of the relative significance of the religion of plaintiff to its activities. This requires this Court to determine facts at the very core of a religion—an interpretation of particular church doctrine and the importance of those doctrines to the religion. The First Amendment to the United States Constitution clearly forbids civil courts from playing such a role. *United States* v. *Ballard*, 322 U.S. 78 (1944); *Presbyterian Church* v. *Mary E. B. Hull, Mem. Pres. Church*, 393 U.S. 440 (1969).

5. The First Amendment to the Constitution of the United States prohibits defendant and this civil court from designating what religion is or is not and defining the

scope of a religion and thereby excluding from the enjoyment of tax exempt status those organizations which do not meet that definition.

6. Defendant in revoking the tax exemption of plaintiff discriminated in the administration of §501(c)(3) of the Internal Revenue Code of 1954 by consciously and arbitrarily selecting plaintiff from other tax exempt organizations engaged in similar activities. The Court concludes as a matter of law that this discrimination and unequal treatment of plaintiff by defendant are of such nature and scope as to constitute violation by defendant of the due process clause of the Fifth Amendment to the Constitution of the United States. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1885); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Neild* v. *District of Columbia*, 110 F.2d 246 (D.C.C.A. 1940).

7. Defendant, in its application of §501(c)(3) of the Internal Revenue Code wherein it has denied a tax exemption to plaintiff, without evidence to support its action and without constitutionally justifiable cause, in violation of the First Amendment to the Constitution of the United States, has denied the free exercise of religion to, and discriminated against, plaintiff. *Speiser* v. *Randall*, 357 U.S. 513 (1958); *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943); *Fowler* v. *Rhode Island*, 345 U.S. 67 (1953); *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

8. Defendant in its administrative proceedings to revoke plaintiff's tax exemption has denied plaintiff due process as guaranteed under the Fifth Amendment to the United States Constitution since defendant willfully violated established and published regulations, procedures, and directives promulgated by defendant for the protection of both its rights and those of taxpayer. *United States* v.

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Heffner, 420 F.2d 809 (4th Cir. 1970); *United States* v. *Leahey*, 434 F.2d 7 (1st Cir. 1970).

9. Having itself met the requirements for tax exemption under §501(c)(3) of the Internal Revenue Code of 1954 and the applicable treasury regulations, and by its protection under the First and Fifth Amendments to the Constitution of the United States, as hereinbefore concluded, wages paid by plaintiff are not subject to the tax imposed by §3111 of the Internal Revenue Code of 1954 under the provisions of §3121(b)(8)(B) of the Internal Revenue Code of 1954, and plaintiff is entitled to a refund of FICA Taxes paid for the years 1961, 1963, 1964, 1965, 1966, 1967, and 1968, together with statutory interest. Plaintiff is entitled to judgment against the United States of America for the following sums paid:

1961—All quarters	$10,972.53
1963—All quarters	10,038.71
1964—All quarters	10,483.11
1965—All quarters	13,618.18
1966—Quarter ending March 31	5,728.52
Quarter ending June 30	5,022.34
September 22 through September 30	354.30
Quarter ending September 30	5,828.31
Quarter ending December 31	4,351.61
1967—Quarter ending March 31	4,770.59
Quarter ending June 30	3,781.48
Quarter ending September 30	4,238.99
Quarter ending December 31	4,341.13
1968—Quarter ending March 31	5,150.73
Quarter ending June 30	4,546.72
Quarter ending September 30	6,086.48
Quarter ending December 31	4,179.35
Total	$103,493.08

together with statutory interest.

10. Plaintiff is entitled to its costs.

11. Plaintiff is directed forthwith to prepare and submit a Judgment in conformity with the Findings of Fact and Conclusions of Law.

Entered this 24th day of June, 1971.

ALLEN E. BARROW,
Chief United States District Judge.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma ss.:

I hereby certify that the foregoing is a true copy of the original on file in this Court.

JOHN H. POE, *Clerk.*
By JACK C. SILVER, *Deputy.*

Appendix B

Opinion of the Supreme Court

SUPREME COURT OF THE UNITED STATES

UNITED STATES

v.

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.

Appeal from the United States District Court of the Northern District of Oklahoma

No. 71-565.

Decided January 24, 1972.

PER CURIAM.

This case began when the Internal Revenue Service revoked the tax-exempt status of the appellee, a nonprofit religious corporation. The appellee had previously enjoyed a tax exemption under §501(c)(3) of the 1954 Internal Revenue Code, 26 U.S.C. §501(c)(3). This section defines exempt organizations, in pertinent part, as:

> "Corporations * * * organized and operated exclusively for religious * * * purposes * * *, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

The appellee's exemption under this provision was revoked on three grounds: (1) that the appellee was not operated exclusively for religious purposes, (2) that it had engaged in substantial activity aimed at influencing legislation, and (3) that it had intervened in political campaigns on behalf of candidates for public office.

The appellee paid the taxes assertedly owed and then filed the present suit for a refund in a Federal District Court, claiming that it was entitled to an exempt status under §501(c)(3) of the Code. The case was heard by a single District Judge sitting without a jury. The judge ultimately decided that the appellee was entitled to tax exempt status and to a refund of the taxes paid.[1]

The District Court rejected all three grounds on which the Internal Revenue Service had revoked the appellee's exempt status. It found, as fact, (1) that the appellee's "activities have been directed toward achieving its religious goals," (2) that "[w]ith the exception of support of the proposed Becker Amendment to the United States Constitution relating to voluntary prayer and Bible reading in public schools, [the appellee] has not engaged in attempts to influence leigslation," and (3) that the appellee "has not endorsed a political candidate, and has not instructed its followers as to how to vote but only to vote." On the basis of its findings of fact, the court concluded as law that the appellee fell within the terms of §501(c)(3). That ended the case. But the District Court nonetheless went on to discuss certain constitutional issues.

In its conclusions of law, the court stated that the First Amendment prohibits both the Government and the courts from determining whether a religious organization is operated for exclusively religious purposes, and is thus eligible for tax-exempt status, by analyzing each and every activity of the organization and classifying it as "reli-

1. The findings of fact and conclusions of law of the District Court in this case, entered on June 24, 1971, are not officially reported.

gious" or "political." In this case, the court said, the Internal Revenue Service conducted and relied upon such an analysis in revoking the appellee's exemption and, for that reason, the Service denied the free exercise of religion to the appellee. The District Court also stated that the Internal Revenue Service violated the appellee's right to due process of law by singling it out, among all other religious organizations, for investigation and exemption revocation "without evidence to support its action."

The United States seeks to appeal the decision of the single District Judge directly to this Court. It argues that we have jurisdiction under 28 U.S.C. §1252. That jurisdictional provision allows a direct appeal to the Supreme Court from the decision of "any court of the United States * * * holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States * * * is a party." Such a direct appeal is allowed whether the Act of Congress was declared unconstitutional "as a whole" or simply "as applied." *Fleming* v. *Rhodes*, 331 U.S. 100, 102-103. The findings and conclusions of the District Court in the present case, however, reveal that it did not hold §501(c)(3) unconstitutional in either of these ways. Hence, we must dismiss this appeal for want of jurisdiction.

The "basis" of the District Court's decision, *United States* v. *Raines*, 362 U.S. 17, 20, was that, under the facts adduced at trial, the appellee qualified for exempt status under §501(c)(3). The court did not question or even consider the constitutionality of §501(c)(3) "as a whole." Nor does any part of its opinion hold that the section was unconstitutional "as applied." Indeed, the court in this case would hardly have found the appellee to be qualified for an exemption under §501(c)(3), only to hold that the section could not be validly applied in the first place.

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The District Court's commentary on the denial of due process to the appellee was directed simply to the *method* by which §501(c)(3) was enforced[2]—not to its basic applicability. The court held that the Internal Revenue Service may not discriminate in applying the section. This holding restricts freewheeling enforcement and may make it more difficult to revoke certain tax exemptions. But it does not call into question the validity of the underlying statute. Under §1252, direct appeal to the Supreme Court is authorized only in the latter situation.

Similarly, the District Court's commentary on the denial of the appellee's First Amendment rights was directed to the particular interpretation given to §501(c)(3) by the Internal Revenue Service in this case and to its means of enforcing that interpretation. At most, the court's reasoning on this point can be read to construe §501(c)(3) narrowly so as to avoid a First Amendment problem.[3] The court refused to interpret and apply the

2. By far the greatest portion of the District Court's findings of fact are directed to the detailed history of the Government's investigation of the appellee's exempt status.

3. For example, the District Court stated:

"43. [The appellant] has characterized certain of [the appellee's] activities during the years involved in this suit as urging the public to contact members of legislative bodies for the purpose of proposing, supporting or opposing legislation. [The appellee] has characterized the same activities as taking stands on issues of the day concerning matters which it construes to threaten its religious beliefs. The Court finds that these activities have resulted from [the appellee's] religious beliefs and were merely incidental to the exercise of its religion and the expression and dissemination of its understanding of biblical concepts. The Court further finds that any such activities by [the appellee] were insubstantial in relationship to the totality of [the appellee's] activities.

"44. [The appellant], in describing and characterizing [the appellee's] activities as political and non-religious, has in fact indi-

(footnote continued on next page)

section to require an analysis of the "religious" or "non-religious" character of every activity by a concededly religious organization, because such an interpretation and application would infringe the right to free exercise of religion. It stated that the Internal Revenue Service had already gone too far in its enforcement of this interpretation. But the statement that the *Service* violated the appellee's First Amendment rights is not the same as a holding that *Congress* did so in enacting §501(c)(3). The court avoided holding that the section itself was unconstitutional "as applied"—*i.e.*, that the section, by its own terms, infringed constitutional freedoms in the circumstances of the particular case. Rather, it held that the Service had misinterpreted §501(c)(3) and that the section must be narrowly construed.[4] Although the construction was based on a constitutional premise, it did not amount to a holding that an Act of Congress is unconstitutional as contemplated by §1252. To the contrary, the District Court construed the section so as to save its constitutionality.

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cated a disagreement with the content and nature of what [the appellee] has said and written. [The appellant] has thereby sponsored its own definitions of 'religion' and 'religious.' Such definitions by [the appellant] are impermissible. * * *

"45. [The appellee's] expression of opinion on 'current issues or issues of the day' is not an act contemplated by prohibition against intervention in political campaigns or legislation and is not a violation of the provisions of Internal Revenue Code."

4. A similar distinction has been drawn in the context of the three-judge district court statute, 28 U.S.C. §2281. "It is necessary to distinguish between a petition for injunction on the ground of the unconstitutionality of a statute as applied, which requires a three-judge court, and a petition which seeks an injunction on the ground of the unconstitutionality of the result obtained by the use of a statute which is not attacked as unconstitutional. The latter petition does not require a three-judge court. In such a case the attack is aimed at an allegedly erroneous administrative action." *Ex parte Bransford*, 310 U.S. 354, 361.

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Our interpretation of the District Court's conclusions of law does not, of course, indicate approval of those conclusions. The issue is not before us. We hold only that there is an absence of appellate jurisdiction under §1252.

The judgment is vacated and the case remanded to the District Court for the entry of a fresh decree, so that the appellant may appeal to the United States Court of Appeals for the Tenth Circuit.

Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

Appendix C

Opinion of United States Court of Appeals for the Tenth Circuit

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,
Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,
Defendant-Appellant.

No. 72-1308.

United States Court of Appeals,
Tenth Circuit.

Dec. 18, 1972.

Rehearing Denied Jan. 17, 1973.

On Appeal from the Judgment of the United States District Court for the Northern District of Oklahoma

(D.C. No. 67-C-114)

Before PHILLIPS, BARRETT and DOYLE, Circuit Judges.

BARRETT, Circuit Judge.

Christian Echoes sued for refund of Federal Insurance Contribution Act (FICA) taxes for 1961 and 1963 through 1968 amounting to $103,493.08 plus statutory interest. On June 24, 1971 the District Court held that the taxpayer qualified for tax exemption under 26 U.S.C.A. Section 501(c)(3). The Government appealed to the United States

Supreme Court which vacated the judgment and remanded for entry of a new decree. United States v. Christian Echoes National Ministry, Inc., 404 U.S. 561, 92 S.Ct. 663, 30 L.Ed.2d 716 (1972). The District Court entered the same decision on February 24, 1972. The Government takes this appeal therefrom.

Christian Echoes is a nonprofit religious corporation organized in 1951 under the laws of Oklahoma by Dr. Billy James Hargis, its president, chief spokesman and an ordained minister. The Articles of Incorporation state in part that the corporation is founded "to establish and maintain weekly religious, radio and television broadcasts, to establish and maintain a national religious magazine and other religious publications, to establish and maintain religious educational institutions, * * *" Article III of the Articles of Faith in the corporate by-laws reads as follows:

> "We believe in God, Supreme and Eternal, and in Jesus Christ as His Son, perfect Deity, and in the Holy Comforter and Challenger of this age, The Holy Ghost, and in the Bible as the inspired Word of God.
>
> We believe that the solution of the World's problems, economic, political and spiritual, is found by the application of Christian Teachings in the lives of men and nations rather than in political ideologies of any kind.
>
> We believe in the Twentieth Century Reformation to combat apostate conditions with the Church.
>
> We realize atheistic world forces seek the destruction and overthrow of all the religions of the World, including particularly that founded upon the teachings of Jesus Christ. The same forces seek also the destruction of all free governments, in which the lives and property of the people are protected by civil, moral and spiritual law.

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> We associate ourselves together to educate and proclaim the essential truths of Christianity, and the doctrine: Jesus Christ is the Hope of the World and America is God's Greatest Nation under the Living Son.
>
> We believe in the real spiritual unity in Christ of all redeemed by His precious blood.
>
> We believe in constitutional government, whereby religious as well as other freedoms of mankind are preserved and protected.
>
> We believe in the fundamentals of New Testament Christianity, and we propose to promulgate the eternal truths thereof at all costs."

The activities of the organization have been addressed to that theology ever since the date of incorporation.

Christian Echoes maintains religious radio and television broadcasts, authors publications, and engages in evangelistic campaigns and meetings for the promotion of the social and spiritual welfare of the community, state and nation. Dr. Hargis has stated that its mission is a battle against Communism, socialism and political liberalism, all of which are considered arch enemies of the Christian faith. Dr. Hargis testified that Christian Echoes supports "Christian conservative statesmen * * *" without regard to party political labels. The organization publishes a monthly anti-Communist magazine, *Christian Crusade*, a weekly "intelligence report," *Weekly Crusader*, and a newspaper column, "For and Against." It also distributes pamphlets, leaflets and broadcast reprints on aspects of anti-Communist activity; it distributes tapes and records of selected broadcasts; and it conducts an annual anti-Communist leadership school whose goal is to answer the question, "What can my community do to stem the forces of liberalism and thus stop the growth of socialism and communism?" In 1962 it established a

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Summer Anti-Communist University and formed youth groups, Torchbearer Chapters, to educate the public on the threat of Communism. In 1964 Christian Echoes encouraged adults to organize local Christian Crusade chapters. Christian Echoes appealed for contributions from the public to carry on its campaign. It earned money from the sale of its publications, tapes, films and admission fees at rallies. From 1961 through 1966 its gross receipts ranged from about $677,000 to $1,000,000 per year. It spent 52% of this income on radio, television, publications and postage.

On March 12, 1953 the Internal Revenue Service ruled that Christian Echoes qualified as a tax-exempt religious and educational organization under Section 501(c)(3) of the 1954 Code, formerly Section 101(6) of the 1939 Code. Section 501(c)(3) states as follows:

> "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, *no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.*" (Emphasis ours.)

In 1962 and 1963 the National Office of the Internal Revenue Service requested that the activities and financial affairs of Christian Echoes be re-examined. The IRS agents recommended no change in its exempt status. The

National Office, after reviewing and analyzing the activities of Christian Echoes, recommended that the exemption be revoked. On November 13, 1964 the District Director in Oklahoma City advised Christian Echoes in a letter of the revocation of its exemption and of its protest rights. Christian Echoes filed a formal protest on June 25, 1965 after conferences with the District Director and the National Office. The District Director notified Christian Echoes on September 22, 1966 that its exempt status was being revoked for three reasons: (1) it was not operated exclusively for charitable, educational or religious purposes; (2) it had engaged in substantial activity aimed at influencing legislation; and (3) it had directly and indirectly intervened in political campaigns on behalf of candidates for public office. Christian Echoes filed further protests without avail. It paid the taxes as assessed. Christian Echoes then filed this refund suit, claiming its right to exemption.

The District Court held that the taxpayer was entitled to tax-exempt status under Section 501(c)(3). The Court ruled that Christian Echoes qualified in that no substantial part of its activities had been devoted to attempts to influence legislation or intervene in political campaigns. The Court found that the only activity of Christian Echoes relating to an attempt to influence legislation was in support of the Becker Amendment urging support of restoration of prayers in the public schools. The Trial Court accepted Dr. Hargis's interpretation of the "attempts to influence legislation" prohibition in 501(c)(3), wherein Dr. Hargis testified on cross-examination that:

> "* * * it's my interpretation that as long as I don't lobby in Washington, which I never have, as long as I don't get behind a bill or a—post a bill which I never have, as long as I don't endorse a political candidate, which I never have * * * that by

> no stretch of the imagination could you say what I am doing is political, * * *"

It also held that all of its activities were motivated by sincere religious convictions; that the First Amendment prohibits the Government and courts from determining whether the activities are religious or political; and that the IRS had revoked Christian Echoes' exempt status without evidence to support its action and without constitutionally justifiable cause in violation of the First Amendent. It found that the taxpayer had been denied its right to due process under the Fifth Amendment because the Government had arbitrarily selected it from organizations engaged in similar activities and had violated its published administrative procedures in the steps leading to the revocation.

The Government appealed directly to the United States Supreme Court which dismissed the appeal for lack of jurisdiction, vacated the District Court's judgment and remanded for entry of a new decree. The IRS appeals from the District Court's holding in favor of Christian Echoes following remand.

The Government contends that: (1) the taxpayer failed to qualify as tax-exempt under Section 501(c)(3); (2) its interpretation and application of Section 501(c)(3) did not violate the taxpayer's rights under the First Amendment; (3) its revocation of tax-exempt status to the taxpayer under Section 501(c)(3) did not violate the taxpayer's rights of due process under the Fifth Amendment; and (4) the Commissioner did not abuse his discretion in revoking the exemption with retroactive effect.

I.

The Government contends that Christian Echoes failed to qualify as tax-exempt under Section 501(c)(3) because: (1) a *substantial* part of its activities consisted of carrying

on propaganda, or otherwise attempting to influence legislation; and (2) it participated or intervened in political campaigns on behalf of candidates for public office. The issue raises the interpretation and application of Section 501(c)(3).

Almost since the earliest days of the federal income tax, Congress has exempted certain corporations from taxation. The exemption to corporations organized and operated exclusively for charitable, religious, educational or other purposes carried on for charity is granted because of the benefit the public obtains from their activities and is based on the theory that:

> "* * * the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare." H.R.Rep.No. 1860, 75th Cong., 3d Sess. 19 (1939).

Tax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions. Dickinson v. United States, 346 U.S. 389, 74 S.Ct. 152, 98 L.Ed. 132 (1953). The limitations in Section 501(c)(3) stem from the Congressional policy that the United States Treasury should be neutral in *political affairs and that substantial activities directed to attempts to influence legislation or affect a political campaign should not be subsidized.*

The limitation in Section 501(c)(3) originated in the Revenue Act of 1934, allowing tax exempt status to organizations, if "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation." The case which led to the 1934 legislation was Slee v. Commissioner of Internal Revenue, 42 F.2d 184 (2nd Cir. 1930). There the Court held that the American

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Birth Control League was not entitled to a charitable exemption because it disseminated propaganda to legislators and the public aimed at the repeal of laws preventing birth control. The IRS denied tax exempt status because the Birth Control League's purposes were not exclusively charitable, educational or scientific. In 1954 Congress attached a further condition to exempt status by adding the bar against participation or intervention in political campaigns on behalf of candidates for public office.

A religious organization that engages in substantial activity aimed at influencing legislation is disqualified from tax exemption, whatever the motivation. The Government has at all times recognized Christian Echoes as a religious organization. Indeed, the Government acknowledges that in all of its activities, Christian Echoes has been religiously motivated.

The critical issue is whether the limitation on attempts to influence legislation should be given the narrow interpretation applied by the District Court or a broader construction. The District Court held that the only attempt to influence legislation by Christian Echoes was in its support of the Becker Amendment relating to restoration of prayers in the public schools. By this construction, there must be specific legislation before Congress in order for the "attempt to influence legislation" prohibition to come into play. We disagree. We hold that the Trial Court was clearly erroneous in this interpretation of law.

Treasury Regulation 1.501(c)(3)-1(c)(3)(ii) states that an organization will be regarded as attempting to influence legislation if the organization:

> "(a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
>
> (b) Advocates the adoption or rejection of legislation."

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Legislation is defined in the regulations as:

> "* * * action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure." Treas. Reg. 1.501(c)(3)-1(c)(3)(ii)(b).

The Regulation goes well beyond the District Court's interpretation of Section 501(c)(3). It includes direct and indirect appeals to legislators and the public in general. Cammarano v. United States, 358 U.S. 498, 79 S.Ct. 524, 3 L.Ed. 2d 462 (1959). We hold that the Regulation properly interprets the intent of Congress. A capsule review of the "substantial" activities of Christian Echoes will adequately demonstrate, we believe, that Congress intended that the limitations be given a broad or liberal interpretation.

Christian Echoes' publications, such as the *Christian Crusade*, contained numerous articles attempting to influence legislation by appeals to the public to react to certain issues. These articles were either authored by Dr. Hargis, members of his organization, solicited contributors, or unsolicited authors—but all such articles had the stamp of approval of Dr. Hargis before acceptance for publication. The fact that specific legislation was not mentioned does not mean that these attempts to influence public opinion were not attempts to influence legislation. For example, Christian Echoes appealed to its readers to: (1) write their Congressmen in order to influence the political decisions in Washington; (2) work in politics at the precinct level; (3) support the Becker Amendment by writing their Congressmen; (4) maintain the McCarran-Walter Immigration law; (5) contact their Congressmen in opposition to the increasing interference with freedom of speech in the United States; (6) purge the American press of its responsibility for grossly misleading its readers on vital issues; (7) in-

form their Congressmen that the House Committee on Un-American Activities must be retained; (8) oppose an Air Force Contract to disarm the United States; (9) dispel the mutual mistrust between North and South America; (10) demand a congressional investigation of the biased reporting of major television networks; (11) support the Dirksen Amendment; (12) demand that Congress limit foreign aid spending; (13) discourage support for the World Court; (14) support the Connally Reservation; (15) cut off diplomatic relations with communist countries; (16) reduce the federal payroll by discharging needless jobholders, stop waste of public funds and balance the budget; (17) stop federal aid to education, socialized medicine and public housing; (18) abolish the federal income tax; (19) end American diplomatic recognition of Russia; (20) withdraw from the United Nations; (21) outlaw the Communist Party in the United States; and (22) to restore our immigration laws.

The taxpayer also attempted to mold public opinion in civil rights legislation, medicare, the Postage Revision Act of 1967, the Honest Election Law of 1967, the Nuclear Test Ban Treaty, the Panama Canal Treaty, firearms control legislation, and the Outer Space Treaty. These appeals urging the readers to action all appeared in Christian Echoes' publications between 1961 and 1968. They were all attempts to influence legislation through an indirect campaign to mold public opinion. This was directly evidenced by Dr. Hargis' keynote address delivered at the Anti-Communist Leadership School on February 11, 1963, entitled "Counter Strategy for Counter Attack." After setting forth a 10-point program, he stated that "Your opinion isn't worth a nickel without your action to back it up."

The political activities of an organization must be balanced in the context of the objectives and circumstances of

the organization to determine whether a *substantial* part of its activities was to influence or attempt to influence legislation. Krohn v. United States, 246 F.Supp. 341 (D.Colo. 1965). A percentage test to determine whether the activities were substantial obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances. Cf. Seasongood v. Commissioner of Internal Revenue, 227 F.2d 907 (6th Cir. 1955). An essential part of the program of Christian Echoes was to promote desirable governmental policies consistent with its objectives through legislation. Kuper v. Commissioner of Internal Revenue, 332 F.2d 562 (3rd Cir. 1964), cert. denied 379 U.S. 920, 85 S.Ct. 276, 13 L.Ed.2d 335 (1964). The activities of Christian Echoes in influencing or attempting to influence legislation were not incidental, but were substantial and continuous. The hundreds of exhibits demonstrate this. These are the activities which Congress intended should not be carried on by exempt organizations.

In addition to influencing legislation, Christian Echoes intervened in political campaigns. Generally it did not formally endorse specific candidates for office but used its publications and broadcasts to attack candidates and incumbents who were considered too liberal. It attacked President Kennedy in 1961 and urged its followers to elect conservatives like Senator Strom Thurmond and Congressmen Bruce Alger and Page Belcher. It urged followers to defeat Senator Fulbright and attacked President Johnson and Senator Hubert Humphrey. The annual convention endorsed Senator Barry Goldwater. These attempts to elect or defeat certain political leaders reflected Christian Echoes' objective to change the composition of the federal government.

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II.

The Government contends that its application of Section 501(c)(3) does not violate the free exercise clause in the First Amendment. Christian Echoes argues strenuously that denial of its tax-exempt status is a direct infringement upon its First Amendment right of free exercise of religion, and discrimination against the religion of its followers. The District Court agreed. The District Court held that the First Amendment forbids the Government and courts from deciding whether such activities are religious or political, and if political, whether substantial. The District Court held that the Government revoked the taxpayer's exempt status without a constitutionally justifiable cause, denying the taxpayer the free exercise of religion. We disagree. We hold that the Court erred.

If we were to adopt the District Court's findings and the arguments advanced by Christian Echoes, we would be compelled to hold that Congress is constitutionally restrained from withholding the privilege of tax exemption whenever it enacts legislation relating to a nonprofit religious organization. This is fully evidenced by the trial court's Conclusion of Law No. 4 which is both clearly erroneous and irrelevant to the substantive issue relating to *substantial* activity for the purpose of attempting to influence legislation. There the Court concluded in part:

> "The Court having found as fact that plaintiff through its followers believes in the religious nature of its activities, neither defendant nor this Court may inquire into such activities and work product of plaintiff for the purpose of determining whether those activities claimed by plaintiff to be religious are religious or political and, if political, whether substantial, for the purpose of denying tax exempt status to plaintiff. To make such an inquiry would first require this Court to define the terms 'religious'

> and 'political,' then separate plaintiff's activities into these two categories applying those labels thereto under definitions established by this Court. This action would require both a quantitative and qualitative analysis of plaintiff's activities. To do so would require an interpretation of the meaning of the church doctrine espoused by plaintiff and a determination of the relative significance of the religion of plaintiff to its activities."

We know of no legal authority supporting the conclusion set forth above. Such conclusion is tantamount to the proposition that the First Amendment right of free exercise of religion, ipso facto, assures no restraints, no limitations and, in effect, protects those exercising the right to do so unfettered. We hold that the limitations imposed by Congress in Section 501(c)(3) are constitutionally valid. The free exercise clause of the First Amendment is restrained only to the extent of denying tax exempt status and then only in keeping with an overwhelming and compelling Governmental interest: That of guarantying that the wall separating church and state remain high and firm. We reject both the District Court's findings and conclusions on the First Amendment constitutional issue just as the United States Supreme Court put down attacks against the enforcement of the provisions of the "Hatch Act" predicated on First Amendment free speech and assembly rights, restraining political activities by certain federal officers and employees in United Public Workers of America (C.I.O.) v. Mitchell, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947) and Oklahoma v. United States Civil Service Commission, 330 U.S. 127, 67 S.Ct. 544, 91 L.Ed. 794 (1947). In these decisions the courts held that the First Amendment rights are not absolutes and that courts must balance First Amendment freedoms against the congressional enactment in order to protect society against political partisanship by Government employees.

Appendix C

In light of the fact that tax exemption is a privilege, a matter of grace rather than right, we hold that the limitations contained in Section 501(c)(3) withholding exemption from nonprofit corporations do not deprive Christian Echoes of its constitutionally guaranteed right of free speech. The taxpayer may engage in all such activities without restraint, subject, however, to withholding of the exemption or, in the alternative, the taxpayer may refrain from such activities and obtain the privilege of exemption. The parallel to the "Hatch Act" prohibitions relating to political activities on the part of certain federal and state employees is clear: The taxpayer may opt to enter an area of federal employment subject to the restraints and limitations upon his First Amendment rights. Conversely, he may opt not to receive employment funds at the public trough in the areas covered by the restraints and thus exercise his First Amendment rights unfettered. The Congressional purposes evidenced by the 1934 and 1954 amendments are clearly constitutionally justified in keeping with the separation and neutrality principles particularly applicable in this case and, more succinctly, the principle that government shall not subsidize, directly or indirectly, those organizations whose substantial activities are directed toward the accomplishment of legislative goals or the election or defeat of particular candidates. From a review of the entire record we hold that the trial court's findings of fact and conclusions of law in this area are clearly erroneous. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969).

III.

The Government also contends that its application of Section 501(c)(3) did not arbitrarily discriminate against Christian Echoes in violation of the Fifth Amendment due process clause as found by the District Court. The

Court found that the Government had arbitrarily selected Christian Echoes in violation of the due process clause. The Fifth Amendment provides that no person shall be deprived of life, liberty or property without due process of law. An organization is being discriminated against in violation of the due process clause only when there is no reasonable relationship to a proper governmental objective. In order to establish discrimination violating the due process clause, the taxpayer must show discrimination based on differences of religion, race, politics or an unacceptable classification. No discrimination is apparent in the record. The fact that the Commissioner has not proceeded against other organizations similar to Christian Echoes does not amount to a denial of due process. Oyler v. Boles, Warden, 368 U.S. 448, 82 S.Ct. 501, 7 L.Ed.2d 446 (1962).

The District Court also erred in its holding that the IRS's departure from its administrative procedures constituted a denial of due process. The taxpayer has not shown any prejudice by deviations from normal procedures.

IV.

The Government alleges that the Commissioner did not abuse his discretion in applying the revocation retroactively. Christian Echoes was notified in November of 1964 that its exempt status might be revoked. The status was formally revoked in September of 1966. The revocation was based on a review of activities during the years 1961-1963. Tax liabilities were assessed for all periods from 1961 through 1966. Section 7805(b) of the Code of 1954 gives the Commissioner the power to prescribe taxes retroactively and his discretion will not be disturbed unless it constitutes an abuse of discretion. Automobile Club of Michigan v. Commissioner of Internal Revenue, 353 U.S. 180, 77 S.Ct. 707, 1 L.Ed.2d 746 (1957). The tax may be

applied retroactively where there has been a misrepresentation or omission of material facts upon which the issuance of the ruling is based. Stevens Bros. Foundation, Inc. v. Commissioner of Internal Revenue, 324 F.2d 633 (8th Cir. 1963), cert. denied 376 U.S. 969, 84 S.Ct. 1135, 12 L.Ed.2d 84 (1964); Birmingham Business College, Inc. v. Commissioner of Internal Revenue, 276 F.2d 476 (5th Cir. 1960). The facts developed on audit were materially different from the facts disclosed in the taxpayer's original exemption application. It did not refer specifically to Christian Echoes' substantial involvement in activities aimed at influencing legislation. Accordingly, the tax-exempt revocation was properly applied retroactively.

Reversed.

Appendix D

Judgment of Court of Appeals

NOVEMBER TERM — DECEMBER 18, 1972

Before Honorable Orie L. Phillips, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges

No. 72-1308

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,
Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,
Defendant-Appellant.

This cause came on to be heard on the record on appeal from the United States District Court for the Northern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is ordered that the judgment of said court is Reversed.

A true copy

Teste

Howard K. Phillips
Clerk, U. S. Court of
Appeals, Tenth Circuit

By Lavon M. Irlbeck
Deputy Clerk

Howard K. Phillips,
Clerk

By: Lavon M. Irlbeck
Deputy Clerk

United States District Court)
Northern District of Oklahoma) ss

I hereby certify that the foregoing is a true copy of the original on file in this Court.

Jack C. Silver, Clerk

By Rosanne F. Miller
Deputy

[SEAL]

Appendix E

Order Denying Petition for Rehearing

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JANUARY TERM—JANUARY 17, 1973

Before Honorable Orie L. Phillips, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges

No. 72-1308

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,
Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,
Defendant-Appellant.

This matter comes on for consideration of the petition for rehearing filed by the appellee.

Upon consideration whereof, the petition for rehearing is denied.

Dated, January 17, 1933.

Appendix F

Federal Statutes

The pertinent parts of Section 501(c)(3) of the Internal Revenue Code of 1954 provide:

> §501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.
>
> (a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) * * * shall be exempt from taxation under this subtitle * * *.
>
> * * *
>
> (c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):
>
> * * *
>
> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The pertinent part of Section 3111(a) of the Internal Revenue Code of 1954 provides:

> §3111. RATE OF TAX
>
> (a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed

on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in Section 3121 (a)) paid by him with respect to employment (as defined in section 3121(b))—* * *.

* * *

The pertinent parts of Section 3121(b) of the Internal Revenue Code of 1954 provide:

§3121. DEFINITIONS

* * *

(b) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service * * * except that, in the case of service performed after 1954, such term shall not include— * * *

* * *

(8) (B) service performed in the employ of a religious, charitable, educational, or other organization described in Section 501(c)(3) which is exempt from income tax under Section 501(a), * * *.

* * *

Section 7805(b) of the Internal Revenue Code of 1954 provides:

§7805. RULES AND REGULATIONS

* * *

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

* * *

Appendix G

U. S. Treasury Regulations

The pertinent parts of U. S. Treasury Regulations on Income Tax (1954 Code):

§1.501(c)(3)-1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

• • •

(c) OPERATIONAL TEST—(1) PRIMARY ACTIVITIES. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

• • •

(3) "ACTION" ORGANIZATIONS.—(i) An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

(ii) An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization—

(a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(b) Advocates the adoption or rejection of legislation. The term "legislation," as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the

public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(iv) An organization is an "action" organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(v) An "action" organization, described in subdivisions (ii) or (iv) of this subparagraph, though it cannot qualify under section 501(c)(3), may nevertheless qualify as a social welfare organization under section 501(c)(4) if it meets the requirements set out in paragraph (a) of §1.501(c)(4)-1.

Appendix H

Original Judgment in the District Court

In the United States District Court

Northern District of Oklahoma

No. 67-C-114

CHRISTIAN ECHOES NATIONAL MINISTRY, INC., A RELIGIOUS CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

JUDGMENT

This action came on for trial before the undersigned Judge, and the issues having been duly tried, and a decision having been duly rendered;

IT IS ORDERED AND ADJUDGED: That the plaintiff, Christian Echoes National Ministry, Inc., recover of the defendant, United States of America, the sum of $103,493.08, together with interest at the rate of six (6) percent per annum from the respective date each portion of such sum has heretofore been paid by plaintiff to defendant, and costs.

Dated June 24, 1971.

ALLEN E. BARROW,
Chief United States District Judge.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma, ss:

I hereby certify that the foregoing is a true copy of the original on file in this Court.

JOHN H. POE, *Clerk.*
By JACK C. SILVER, *Deputy.*

Appendix I

The Fresh Judgment of the District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED
Feb. 24, 1972
John H. Poe, Clerk
U. S. District Court

Civil No. 67-C-114

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

JUDGMENT

A judgment having been entered herein on June 24, 1971, and the defendant having appealed from that judgment to the United States Supreme Court, pursuant to 28 U.S.C. §1252, and the Supreme Court, by order dated January 24, 1972, having determined that there was an absence of appellate jurisdiction under 28 U.S.C. §1252, and having vacated the prior judgment herein and having remanded the case to this Court for an entry of a new judgment, it is, in conformity therewith,

ORDERED, ADJUDGED and DECREED that the judgment of June 24, 1971, be and the same is hereby vacated, and it is

FURTHER ORDERED, ADJUDGED and DECREED that, in conformity with the findings of fact and conclusions of law entered herein on June 24, 1971, plaintiff, Christian Echoes National Ministry, recover of the defendant, United States of America, the sum of $103,493.08, together with interest according to law at the rate of 6 percent per annum from the respective date each portion of such sum has been paid by plaintiff to defendant, and costs.

ENTERED this 24 day of February, 1972.

Allen E. Barrow
United States District Judge

APPROVED AS TO FORM:

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Appendix J

The Government's Notice of Appeal to the 10th Circuit

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

Civil No. 67-C-114

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

NOTICE OF APPEAL

NOTICE is hereby given that the defendant, United States of America, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the judgment entered herein on February 24, 1972.

NATHAN G. GRAHAM
United States Attorney

Original signed by:
BEN A. DOUGLAS

Attorney, Tax Division
Department of Justice
8E2 Federal Office Building
1100 Commerce Street
Dallas, Texas 75202

ATTORNEY FOR DEFENDANT

Appendix K

Assessment of Income Taxes Against Christian Echoes

Address any reply to:

200 NW. 4th St., Oklahoma City, Okla. 73102
US Treasury Department
District Director
Internal Revenue Service
Date:
Jun 25 1971 In reply refer to:
A:SB

CERTIFIED MAIL

Christian Echoes National Ministry, Inc.
2808 South Sheridan Road
Tulsa, Oklahoma 74129

Gentlemen:

Tax Year Ended:	*Deficiency*
12-31-64	$ 25,151.60
12-31-65	$108,338.94
12-31-66	$ 84,990.55

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

Appendix K

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D. C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D. C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,

Harold T. Swartz
Acting Commissioner

By
/s/ Clyde L. Bickerstaff

Clyde L. Bickerstaff
District Director

Enclosures:
Waiver
Statement
Envelope